

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 and on 26 November 2018

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THIS AGREEMENT is dated the 8th day of December 2014 and amended on the 17th day of July 2017 and on the 26th day of November 2018 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 Two Snowhill, Snow Hill 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 July 2018:
 - (1) the SoS confirmed the preferred route for Phase 2a in November 2015 and a Bill for Phase 2a was introduced in Parliament on 17 July 2017;

- (2) the SoS made an announcement in relation to the preferred route of Phase 2b on 15 November 2016 and confirmed the preferred route 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 versions of the Agreement entered into by SoS and HS2 Ltd on 8 December 2014 and 17 July 2017 and incorporates all Change Confirmation Notices signed up until 10 August 2018. The Operational Annex 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.

"Accepted Programme" has the meaning given in Annex 11 (WCP Franchisee);

"Additional Land" means Land acquired under a statutory or non-statutory scheme which is not required for the construction of the Railway, as set out in the Land & Property Strategy;

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

"Affirmation" means the affirmation of the interpretation of any requirement of the Core Programme or Wider Programme in accordance with Clause 32.2 (Affirmation);

"Affirmation Process" means the process agreed from time to time between HS2 Ltd and the SoS in accordance with Clause 32.2 (Affirmation);

"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 23.6;

"Anti-Bribery Requirements" has the meaning given in Clause 35.1(A);

"Anti-Bribery Terms" has the meaning given in Clause 35.4;

"Anticipated Final Cost" means, for any Phase at a given date, the aggregate of the net 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 net 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 17.3 and including the details set out in Clause 17.3;

“Assets” has the meaning given in Clause 17;

“Baseline Cost Model” means, in respect of a Phase, the baseline cost model including the minimum requirements set out at Clause 13.2, and which has been approved by the SoS or any amended version which is substituted for it in accordance with Clause 13.8;

“Baseline Delivery Schedule” means, in respect of a Phase, the baseline delivery schedule including the minimum requirements set out in Clause 13.1, and which has been approved by the SoS, or any amended version which is substituted for it in accordance with Clause 13.8;

“Baseline Operational Cost Model” means, in respect of a Phase, the baseline operational cost model including the minimum requirements set out at Clause 13.3, and which has been approved by the SoS, or any amended version which is substituted for it in accordance with Clause 13.8;

“Benefits Baseline” means, in respect of a Phase, the benefits baseline document including the requirements set out in Clause 13.4, and which has been approved by the SoS, or any amended version which is substituted for it in accordance with Clause 13.8;

“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 18.2(A);

“Bill Support Functions” means those functions set out in Clause 18.2(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;

[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 31.7;

“Business Case” means the five-part business case for each Phase 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”,

in each case developed in accordance with the Green Book, the DfT's Guide to Drafting a Business Case and WebTAG, and 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 18.4) including:
 - (1) any additional or removed requirement or constraint unless such change is required to ensure that HS2 Ltd complies with its obligations under this Agreement; and
 - (2) any failure of the SoS to take account of comments made by HS2 Ltd in accordance with paragraph 7.5 of Annex 11 (WCP Franchisee), where and to the extent that such comments demonstrate that any draft (or varied) Accepted Programme or Transitional Programme provided to it by the SoS pursuant to paragraph 7.5 of Annex 11 (WCP Franchisee) is inconsistent with, or would have an adverse impact upon, the Baseline Delivery Schedule;

- (E) any new HS2 Ltd Undertaking identified pursuant to Clause 14.2(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;
- (F) any other matter that this Agreement specifically deems to be a Change; or
- (G) 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 3.4 (SoS proposed Change) or 3.5 (HS2 Ltd proposed Change) of Annex 7 (Change Procedure) and containing (as a minimum) the information specified in paragraph 4.1 of Annex 7 (Change Appraisal);

"Change Appraisal Consultation Period" has the meaning given in paragraph 5.1 of Annex 7 (Change Procedure);

"Change Confirmation Notice" has the meaning given in paragraph 5.2(A) of Annex 7 (Change Procedure);

"Change Funding Determination" has the meaning given in paragraph 5.2(A) of Annex 7 (Change Procedure);

"Change Rejection Notice" has the meaning given in paragraph 5.2(B) 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 6;

"Collaboration Agreement" means the agreement to be executed by the SoS, HS2 Ltd and the WCP Franchisee, providing for HS2 Ltd and the WCP Franchisee to collaborate for the delivery of their respective responsibilities under this Agreement and under the Franchise Agreement, as may be amended from time to time;

"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;

"Core Land" means Land required for, or in connection with, the construction aspects of the Core Programme;

"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 which relate to the Core Programme;

"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;

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

¹ The Parties are aware that the content of the Euston Option Agreement is out of date. HS2 Ltd has recommended in its response to CN007 that the EOA should be terminated.

"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 GDPR;

"Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by the Data Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

"Data Processor" has the meaning given to it in the GDPR;

"Data Protection Impact Assessment" means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data;

"Data Protection Legislation" means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

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

"Data Subject Access Request" means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their 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, 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 29;

“DPA 2018” means the Data Protection Act 2018;

“Effective Date” means 8 December 2014;

“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;

“Euston Development Agreement” means the development agreement dated 15 March 2018 between the Master Development Partner, Network Rail and the SoS relating to the Euston Over Site Development;

“Euston Over Site Development” means the erection and completion on the Euston Estate (as specified in the Euston Development Agreement) of a commercial led 'over station' mixed use scheme, including all buildings, erections, structures, highways, drainage, infrastructure and other works as contemplated by the Euston Development Agreement;

“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 12.3(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, agreed between the Parties from time to time. The version existing at July 2018 is annexed at Annex 10 (Financial Annex);

“Financial Year” means 1 April to 31 March;

“First Level Representatives” has the meaning given in Clause 29.2;

“FOIA” means the Freedom of Information Act 2000;

"FOIA Discloser" has the meaning given in Clause 34.2;

"FOIA Recipient" has the meaning given in Clause 34.2;

"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 8 December 2014 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;

"Franchise Agreement" has the meaning given in Annex 11 (WCP Franchisee);

"Full Business Case", means each Business Case, for each Phase, developed to full business case stage;

"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 10.3. 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;
- (D) the Promotion, Engagement and Communications Functions; and
- (E) functions relating to property schemes as specified in Clause 18.6;

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

"GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679);

"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;

"Health and Safety Legislation" means all applicable Legislation, judgments, decisions, injunctions of any court or tribunal and legally binding codes of practice and guidance notes to the extent that they relate to or apply to the health and safety of any person (including but not limited to fire safety and relevant building regulations);

"High Speed Services" has the meaning given in Annex 11 (WCP Franchisee);

"High Speed Rolling Stock" has the meaning given in Annex 11 (WCP Franchisee);

"High Speed Rolling Stock MSA" has the meaning given in Annex 11 (WCP Franchisee);

"High Speed Rolling Stock TSA" has the meaning given in Annex 11 (WCP Franchisee);

"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 14.2(A);

"HS2 Ltd's Core Programme Risks" has the meaning given in Clause 26.1;

"HS2 Ltd's Liabilities" has the meaning given in Clause 26.2;

"HS2 Network" has the meaning given in Annex 11 (WCP Franchisee);

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

"Information Commissioner" and "Information Commissioner's Office" have the meaning given in the GDPR;

“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;

“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 16.1;

“LED” means the Law Enforcement Directive (Directive (EU) 2016/680);

“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;

“Management Information” has the meaning given in Clause 23.2;

“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;

“Management Land” has the meaning given in Clause 16.4(A);

“Master Development Partner” means Lendlease Europe Holdings Limited;

“Monthly Delivery Report” has the meaning given to such term in Clause 23.5(A);

“Network Rail” means Network Rail Infrastructure Limited, whose registered address is 1 Eversholt Street, London, NW1 2DN with company number 02904587;

“Non-Routine Advice & Policy Support Functions” means those functions set out in Clause 18.4(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 18.4(B)(4);

"NRAPSI" has the meaning given in paragraph 2 of Annex 7 (Instruction and Change procedures);

"O&M Land" has the meaning given in Clause 16.8 (O&M Land);

"Operational Annex" means the document, as updated from time to time in accordance with Clause 22, 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 25.1. The pro forma version existing in January 2018 is annexed to this Agreement at Annex 9 (Operational Annex);

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

"Operations" means HS2 Ltd's functions in relation to the operation of the Railway, to be carried out in accordance with Clause 19;

"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 Rail & Road 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;

"Performance Default" means any breach by HS2 Ltd of Clause 8 in respect of which the SoS has elected to declare a Performance Default, in his/her absolute discretion;

"Periodic Land and Property Plan" has the meaning given in Clause 16.1(A)(4);

"Permitted Purposes" has the meaning given in Clause 20.1(A);

"Personal Data" and "Personal Data Breach" have the meaning given in the GDPR;

"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 31.1 and/or 31.2;

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

"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 31.1(B), as updated in accordance with the remainder of Clause 31;

"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 31.1(C), as updated in accordance with the remainder of Clause 31;

"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 25.1;

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

"Processing, Personal Data and Data Subjects Annex" means the document agreed and updated between the SoS and HS2 Ltd from time to time which sets out the manner in which the Data Processor shall process Personal Data;

"Programme Representative" means the representative appointed by the SoS pursuant to Clause 5.1, also known as the "Project Representative" or "P-Rep";

"Promotion, Engagement and Communications Functions" has the meaning given in Clause 18.5;

"Protective Measures" means the appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring

that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;

“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 23.7;

“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 18.4(A);

“RS Draft Documents” means the draft documents relating to Rolling Stock Contracts referred to in Clauses 12.5(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 12.5(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 12.5(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 29.3;

“Shadow Operator” has the meaning given in Annex 11 (WCP Franchisee);

“SoS Dependency” means:

- (A) the SoS complying with Clause 12.5(F)(2);
- (B) the SoS complying with Clause 13.1(D);
- (C) the SoS complying with Clause 14.2(B);
- (D) the SoS complying with Clause 20.2;
- (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;
- (J) the failure by the SoS to provide a SoS Dependency; or
- (K) the WCP Franchisee is not delivering the Accepted Programme and/or the Transitional Programme in accordance with the Franchise Agreement,

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 27;

"SoS Retained Risk Event Remedial Action Plan" has the meaning given in Clause 27.3;

"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 9.3. The version existing in November 2018 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. The version approved by the Client Board on 27 April 2018 is annexed at Annex 8 (Strategic Goals and Objectives);

"Sub-processor" means any third Party appointed to process Personal Data on behalf of the Data Processor in relation to this Agreement;

"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 31.2(B) as amended from time to time pursuant to the terms of this Agreement;

"TMM" has the meaning given in Annex 11 (WCP Franchisee);

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

"Transitional Programme" has the meaning given in Annex 11 (WCP Franchisee);

"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;

"UAR Allocation Process" has the meaning given in Clause 14.2(C);

"UAR Default" has the meaning given in Clause 14.2(M);

"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);

"Warranty Repair Liquidated Damages" means any liquidated damages paid to HS2 Ltd by the TMM pursuant to clause 18.7 (Liquidated damages for warranty work) of the High Speed Rolling Stock MSA;

"WCP Franchisee" has the meaning given in Annex 11(WCP Franchisee);

"WCP Shadow Operator Start Date" has the meaning given in Annex 11 (WCP Franchisee);

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

"Wider Programme Benefits" means the benefits specified in the Benefits Baseline for each Phase which relate to the Wider Programme;

"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 49 (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/her 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 Annex and this Agreement

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

PART 2: ROLES AND CO-OPERATION

3. The SoS's role

3.1 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, the Master Development Partner and the WCP Franchisee) 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 the WCP Franchisee and 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;
- (K) build and maintain skills, capabilities and systems which are necessary and appropriate to enable the SoS to comply with his/her obligations under this Agreement and effectively to fulfil his/her roles as specified in this Clause 3.1; and
- (L) dispose of interests in, or rights over, Land from time to time.

4. **HS2 Ltd's role**

4.1 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:
 - (1) in respect of all Phases until the WCP Shadow Operator Start Date; and
 - (2) in respect of Phase 2b only on and from the WCP Shadow Operator Start Date;
- (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;
- (H) ensuring that station design takes account of the potential for future development and regeneration of adjacent local communities;
- (I) procurement of the Master Development Partner ("**MDP**") for Euston Over Site Development. Until the MDP is appointed HS2 Ltd shall also:
 - (1) act as interim development manager, procuring and managing master planners to deliver in accordance with the brief;
 - (2) support the refresh of the Outline Business Case and/or development of the Full Business Case for Euston Over Site Development and the station design process; and
- (J) stakeholder management (full details of these roles are set out in SoSCN 009 and HS2 Ltd's formal response); and
- (K) seeking to identify and secure continuous improvement opportunities.

4.2 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.

4.3 HS2 Ltd acknowledges that it has additional obligations relating to Euston Over Site Development pursuant to a separate agreement with the SoS and Network Rail.

5. **Programme Representative**

5.1 **Programme Representative's role**

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

(B) The Programme Representative exists to provide the SoS with assurance and advice that the development and delivery of the Core Programme and the Wider Programme is:

- (1) meeting requirements;
- (2) being delivered in a manner to realise expected benefits;
- (3) affordable; and
- (4) good value for money.

(C) It is the Programme Representative's role to review and challenge the proposals and performance of HS2 Ltd in respect of costs, time, quality and organisation. The Programme Representative works collaboratively with the SoS and HS2 Ltd to provide independent and objective assurance and advice. The Programme Representative adopts an assurance framework based on Lines of Inquiry (LOIs). The LOIs are: Strategic Objectives; Governance and Stakeholders; Resources and Organisational Structure; Funding; Procurements and Commercial; Legal, Consents, Land and Property; Engineering and Technical; Scope, Cost, Schedule and Risk; and Operations and End State. The outputs of the Programme Representative's assurance activity include monthly reports, briefing notes and attendance at panels, boards and meetings.

5.2 **HS2 Ltd's assistance**

(A) Without prejudice to Clause 23.3(B)(2), HS2 Ltd shall (and shall procure that all other HS2 Ltd Related Parties shall (save for Delivery Contractors and 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 Programme Representative and provide the 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 Programme Representative may reasonably require to enable the Programme Representative to carry out its role specified in Clause 5.1 in relation to Core Programme matters and, to the extent that it is reasonable to do so, Wider Programme matters.

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

6. **Role of the 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.

7. **Co-operation**

7.1 **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 Programme Representative and with the WCP Franchisee), in good faith and in a reasonable and transparent manner:
 - (1) to facilitate HS2 Ltd's management, development and delivery of the Core Programme, including where SoS approval is required;
 - (2) in respect of third party requests for additional or revised scopes of work at stations; and
 - (3) on all matters relating to the Wider Programme.
- (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.
- (C) HS2 Ltd shall, acting reasonably, co-operate with and support the objectives of the Master Development Partner in respect of the Master Development Partner's obligations to plan, finance, deliver and manage development and regeneration at Euston on behalf of the SoS pursuant to the Euston Development Agreement.

7.2 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/her discretion and/or his/her 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/she becomes aware during the course of this Agreement of:

- (A) any HS2 Ltd Undertakings Default;
- (B) 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;
- (C) any breach, or any potential material breach which is reasonably likely to occur, by either Party of:
 - (1) this Agreement;
 - (2) any Core Programme Document to which it or he/she is a party; or
 - (3) (in the case of HS2 Ltd) any Delivery Contract;
- (D) any SoS Retained Risk Event (including non-delivery of the Accepted Programme and/or Transitional Programme in accordance with the Franchise Agreement); and/or
- (E) any other matter whatsoever which may have a material adverse impact on either Party's compliance with its or his/her obligations under this Agreement, any Core Programme Document or any Delivery Contract.

7.3 **Strategic Goals and Objectives**

The Parties acknowledge that on 27 April 2018 the most recent version of the Strategic Goals and Objectives were agreed between the Parties and approved by the Client Board. The Parties shall use their reasonable endeavours to deliver the Strategic Goals and Objectives.

PART 3: DELIVERY OF THE CORE PROGRAMME

8. HS2 Ltd's obligations

8.1 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;
- (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/her 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 14.2);
- (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.

8.2 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.

8.3 HS2 Ltd will operate and maintain each of the various parts and/or Phases of the Core Programme in accordance with Best Current Practice.

8.4 Subject to Clause 31.4, 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.

8.5 HS2 Ltd shall comply with the provisions of Annex 11 (WCP Franchisee).

9. **Sponsor's Requirements**

9.1 Annex 2 (Sponsor's Requirements) sets out the version of the Sponsor's Requirements issued by the SoS as at November 2018.

9.2 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).

9.3 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 9, 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.

9.4 The Parties shall use the Revised Sponsor's Requirements unless and until it is amended again in accordance with this Agreement.

9.5 When a Revised Sponsor's Requirements document is issued by the SoS in accordance with Clause 9.3, it shall supersede any previous versions and shall constitute the definitive version of the Sponsor's Requirements.

10. **Functional Response**

10.1 Annex 3 (Functional Response) sets out the version of the Functional Response issued by HS2 Ltd as at June 2016.

10.2 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).

10.3 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 10, 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.

10.4 The Parties shall use the Revised Functional Response unless and until it is amended again in accordance with this Agreement.

10.5 When a Revised Functional Response is issued by HS2 Ltd in accordance with Clause 10.3, it shall supersede any previous versions and shall constitute the definitive version of the Functional Response.

11. **Business Case**

11.1 The Business Case shall be developed, delivered and updated in accordance with this Clause 11, Clause 3.1(D) and Clause 18.4(A)(3)(a).

11.2 The Business Case may be amended from time to time by the SoS in consultation with HS2 Ltd.

11.3 The Full Business Case for Phase One will be produced at or before the time of "Notices to Proceed" for the main works civils contracts for Phase One.

12. **Delivery**

12.1 **Strategies**

(A) HS2 Ltd shall establish and maintain appropriate strategies for each Phase in the following areas:

(1) procurement; and

(2) commissioning,

each a "Strategy", and provide a copy of the same to the SoS upon request.

(B) Before finalising or amending either Strategy, HS2 Ltd shall obtain the prior approval of the SoS.

12.2 Procurement Strategy

HS2 Ltd shall produce procurement Strategies in each of the following areas:

- (A) main works civils contracts;
- (B) stations;
- (C) systems;
- (D) Rolling Stock Contracts; and
- (E) depots,

and, subject to the delegations contained in the Operational Annex, finalise each such Strategy before it undertakes any aspect of the procurement of the relevant area.

12.3 Commissioning Strategy

- (A) HS2 Ltd shall ensure that its Strategy for the commissioning of each Phase is approved by the SoS prior to commissioning any part of that Phase and includes:
 - (1) an acceptable completion certification process;
 - (2) providing third parties (including the initial TOC) with access to the Railway;
 - (3) providing third parties with the required technical support (including design, programme and equipment) for them to undertake their supply, testing, operating and maintenance activities as appropriate;
 - (4) the provision of intellectual property rights, manuals and spares;
 - (5) HS2 Ltd leading the process for securing the licence approvals, ORR support and any other consents required for the operations stage; and
 - (6) HS2 Ltd providing evidence of appropriate maintenance strategies and processes which take into account the future operations of the Railway.
- (B) The SoS will review the completion certificate (and supporting evidence) for each Phase and will, if he/she is satisfied that the relevant requirements for that Phase have been met (having first been advised by the Programme Representative), issue the Final Certificate for that Phase.
- (C) The SoS will ensure that an initial TOC for the provision of passenger services is appointed for each Phase, having the resources, expertise and incentives to work collaboratively to complete the commissioning process efficiently.

12.4 Security

- (A) HS2 Ltd shall during the design, construction, and operation phases of the Core Programme ensure that it has all the appropriate security processes and controls in place for personnel, cyber, systems, physical and operational

security which comply with relevant legislation, guidance, Best Current Practice and all other relevant best practice with regard to security.

- (B) HS2 Ltd shall promptly notify the SoS in writing if it considers that there is any risk of the obligations specified in Clause 12.4(A) not being satisfied.
- (C) The SoS may at any time request an external audit regarding security and HS2 shall comply with all recommendations arising from any such audit to the extent that such audit identifies any non-compliance with this clause.

12.5 Delivery and procurement of Delivery Contracts

- (A) HS2 Ltd shall plan a timetable for delivery of the Core Programme with the prior approval of the SoS.
- (B) Subject to Clause 12.5(F), HS2 Ltd shall be entitled at its own discretion to procure, award and execute the Delivery Contracts in accordance with the Operational Delegations.
- (C) HS2 Ltd shall not enter into any Delivery Contract otherwise than in accordance with the Operational Delegations, except with the prior written consent of the SoS.
- (D) HS2 Ltd will enter into each Delivery Contract on a basis that flows down the obligations and rights assumed by HS2 Ltd under this Agreement in so far as applicable to the relevant Delivery Contract, except where HS2 Ltd determines (in its reasonable opinion and in accordance with Best Current Practice) that it will represent better value for money for HS2 Ltd to manage any such risk or obligation.
- (E) HS2 Ltd will not contract in a manner that would breach, or put HS2 Ltd in breach of, the terms of this Agreement or any other agreement to which it is a party.
- (F) In relation to any Rolling Stock Contract and without prejudice to Clauses 12.5(A) to 12.5(D):
 - (1) before:
 - (a) the issue of documentation (including any output specifications for rolling stock) comprised in any OJEU contract notice, prequalification questionnaire and final invitation to tender (or any analogous process) in respect of any Rolling Stock Contract;
 - (b) the finalisation of any shortlist of contractors in respect of any Rolling Stock Contract;
 - (c) the selection of any preferred bidder in respect of any Rolling Stock Contract; or
 - (d) the award of any Rolling Stock Contract to the successful bidder,

HS2 Ltd shall submit copies of relevant draft documentation as required for Clause 12.5(F)(1)(a) to 12.5(F)(1)(d) (the "RS Draft Documents") to

the SoS for approval on or before the relevant RS Draft Document Request Dates;

- (2) subject to HS2 Ltd complying with its obligations under Clause 12.5(F)(1), the SoS shall (subject to the SoS's compliance with all applicable procurement law) either approve or reject such RS Draft Documents on or before the relevant RS Draft Document Due Dates; and
- (3) HS2 Ltd shall ensure that the RS Draft Document Request Dates and RS Draft Document Due Dates are included at all times in the Baseline Delivery Schedule for each Phase, provided always that the Parties may agree in writing that alternative dates shall constitute the RS Draft Document Request Dates and RS Draft Document Due Dates and that the relevant dates specified in the Baseline Delivery Schedule for that Phase shall not apply.

12.6 High Speed Rolling Stock

- (A) HS2 Ltd shall not, following contract award of the High Speed Rolling Stock, materially alter or vary the High Speed Rolling Stock MSA or the High Speed Rolling Stock TSA other than as expressly allowed for in the Operational Delegation agreed for the High Speed Rolling Stock without the written permission of the SoS.
- (B) Before issuing the contract award for the High Speed Rolling Stock, HS2 Ltd shall demonstrate to the satisfaction of the SoS that HS2 Ltd has set up the appropriate ownership structures for the High Speed Rolling Stock, whether through a special purpose vehicle or otherwise, which have been assessed from both a financial and a commercial perspective.
- (C) HS2 Ltd shall obtain the prior consent of the SoS before it accepts the Minimum Fleet (as defined in the High Speed Rolling Stock MSA). If HS2 Ltd wishes to accept the Minimum Fleet (as defined in the High Speed Rolling Stock MSA) subject to qualifications, HS2 Ltd shall demonstrate to the SoS why such qualifications are acceptable and what mitigation measures have or will be put in place to offset the related risks.
- (D) Promptly following receipt of any payment of Warranty Repair Liquidated Damages by the TMM, HS2 Ltd shall notify the SoS of the amount of such Warranty Repair Liquidated Damages received and HS2 Ltd and the SoS shall agree how such amount is to be applied taking into account any related liabilities of HS2 Ltd (including to the operator under any lease or other arrangement).

12.7 Infrastructure management

- (A) HS2 Ltd will be the Infrastructure Manager for the HS2 Network. HS2 Ltd shall ensure that, as Infrastructure Manager, it:

- (1) provides a safe and sustainable infrastructure that meets customers' expectations and achieves HS2 Ltd's commitment, subject to Clauses 13.3 and 31.4, to minimise whole-life, whole-system costs. HS2 Ltd shall not sub-contract the role of Infrastructure Manager without the permission of the SoS;
 - (2) balances long-term value for money for the tax payer with commercial attractiveness for any future operators, while paying particular attention to key aspects that will impact HS2 Ltd's asset management and infrastructure maintenance capabilities; and
 - (3) designs and develops commercial and network operations functions as well as innovative asset maintenance systems and approaches, to ensure that asset condition monitoring uses 'smart' technology and competent people.
- (B) HS2 Ltd shall design an asset management capability and system which complies with ISO 55000 and fully aligns with Building Information Modelling and HS2 business systems.
 - (C) HS2 Ltd shall promptly notify the SoS if it considers that there is any risk of the obligations specified in this Clause 12.7 not being satisfied.
 - (D) The SoS may at any time request an external audit regarding infrastructure management and asset management and HS2 Ltd shall comply with all recommendations arising from any such audit to the extent that such audit identifies any non-compliance with this clause.

12.8 Petitioner management

HS2 Ltd shall plan for petitioner management for Phase 2a and Phase 2b in accordance with Best Current Practice.

12.9 Proxy Operator capabilities

HS2 Ltd shall ensure that it has, or has access to, the organisational capabilities to act as if it is a Proxy Operator for the relevant Phases, as required by Clause 4.1(C), for the purposes of the management, development and delivery of the Core Programme, including identifying and securing opportunities to reduce the whole life, whole system costs (in accordance with the Sponsor's Requirements) of the delivery of the Core Programme (as referred to in Clause 8.4).

12.10 System integration

HS2 Ltd shall ensure that the Railway is developed in such a manner that all of its constituent elements (including infrastructure, rolling stock, railway systems, operation and maintenance facilities and power to supply all of the foregoing) integrate fully together in order to achieve full integrated functionality.

12.11 Intellectual Property rights

HS2 Ltd shall procure that all Delivery Contracts contain those intellectual property rights provisions as set out in an agreement between HS2 Ltd and the SoS dated 8 March 2016, as updated from time to time by agreement between the Parties.

12.12 Insurance

- (A) The SoS has approved the procurement and maintenance of appropriate insurances (including as to scope, exclusions, duration, deductibles and limits), including an owner controlled insurance policy for Phase One and Phase 2a.
- (B) Subject to Clause 12.12(C), before procuring and/or maintaining insurances for Phase 2b, HS2 Ltd shall obtain the prior approval of the SoS to the content of such insurances (including as to scope, exclusions, duration, deductibles and limits).
- (C) HS2 Ltd shall not require the prior approval of the SoS when procuring or renewing employer's liability insurances, public liability (non contracting or railway operations) insurances, employee travel insurances or directors' and officers' indemnity insurances.

12.13 Integrated Assurance and Approval Plan

HS2 Ltd shall develop an integrated assurance and approval plan in accordance with the "Treasury Approvals Process for Programmes and Projects" dated November 2016.

13. Baselines

13.1 Baseline Delivery Schedules

- (A) HS2 Ltd shall maintain a Baseline Delivery Schedule covering each Phase which takes into account HS2 Ltd's obligations under Clauses 8.2 and 8.3, is sufficient for the purposes referred to in Clause 13.6 and includes as a minimum:
 - (1) the key dates relevant to that Phase, including:
 - (a) any SoS Dependency Milestone Dates and HS2 Ltd Dependency Milestone Dates;
 - (b) the commencement and completion of the design, procurement, construction and commissioning activities relating to that Phase;
 - (c) key integration dates both in respect of the Core Programme and the Wider Programme;
 - (d) the Target Final Delivery Date for that Phase;
 - (e) any key dates on or by which anything is to be provided by the SoS (including the dates by which the SoS shall approve or reject the draft documentation referred to in Clauses 12.5(F)(1)(a) to 12.5(F)(1)(d)), any Government Authority, any utility company, any Delivery Contractor (or any Delivery Sub-Contractors), any TOC or any third party; and
 - (f) any dates for any key events to occur, including the anticipated date of granting of Royal Assent for any Bill(s) in respect of that Phase;

- (2) the anticipated sequence, duration and timing of each stage of design, procurement, construction and commissioning activities for that Phase;
 - (3) a high level and indicative timetable for the acquisition of the relevant Land (and associated real estate rights) for that Phase; and
 - (4) the critical path and critical tasks for that Phase.
- (B) Either Party may (acting promptly) notify the other Party from time to time if it requires that a new SoS Dependency Milestone Date or HS2 Ltd Dependency Milestone Date is added to the Baseline Delivery Schedule for a Phase and/or it requires any change to an existing SoS Dependency Milestone Date or HS2 Ltd Dependency Milestone Date, and shall propose a Change in respect of such requirement in accordance with Annex 7 (Change Procedure), save that if such requirement relates to a Change which is or will be agreed in accordance with Annex 7 (Change Procedure), the Parties shall agree any such new SoS Dependency Milestone Date (and the details of the SoS Dependency Milestone to which it relates) or HS2 Ltd Dependency Milestone Date (and the details of the HS2 Ltd Dependency Milestone to which it relates) as part of that procedure.
- (C) HS2 Ltd may not change or deviate from any part of the Baseline Delivery Schedule for a Phase in a manner that has a material impact on its ability to achieve a HS2 Ltd Dependency Milestone by the relevant HS2 Ltd Dependency Milestone Date, unless and until it has proposed a Change in respect thereof and such Change has been agreed in accordance with Annex 7 (Change Procedure).
- (D) The SoS shall achieve each SoS Dependency Milestone by the relevant SoS Dependency Milestone Date (save where he/she has proposed a Change in respect thereof and such Change has been agreed in accordance with Annex 7 (Change Procedure)) provided always that the following conditions have been met:
- (1) HS2 Ltd has fully complied with its obligations in respect of such SoS Dependency Milestone under this Contract or any agreement between HS2 Ltd and a third party;
 - (2) no breach of contract or any act or omission by HS2 Ltd has led to any failure or delay in the SoS meeting such SoS Dependency Milestone by the relevant SoS Dependency Milestone Date; and
 - (3) HS2 Ltd has used all reasonable endeavours and has acted in accordance with Best Current Practice to mitigate the effects of any failure or delay of the SoS to meet such SoS Dependency Milestone by the SoS Dependency Milestone Date, and such mitigation shall include HS2 Ltd taking all reasonable steps to minimise any increase in costs and maximise any reduction in costs arising from such failure or delay, without compromising the overall Core Programme objectives required under this Agreement and HS2 Ltd using reasonable endeavours to procure that the Delivery Contractors and the Delivery Sub-Contractors take all such steps.

13.2 Baseline Cost Models

HS2 Ltd shall prepare for approval by the SoS, and thereafter maintain a Baseline Cost Model covering each Phase which takes into account HS2 Ltd's obligations under Clauses 8.2 and 8.3, is sufficient for the purposes referred to in Clause 13.5, is prepared on the basis of the same assumptions as the Baseline Delivery Schedule for that Phase and includes as a minimum:

- (A) details of all costs of carrying out all Permitted Purposes for the relevant Phase;
- (B) annual cost estimates for work packages prepared in accordance with Governmental accounting practices;
- (C) the total of the sums of the annual cost estimates;
- (D) any additional cost information on risks, presented as a range of probabilities, including a 50% probability, a 95% probability and (if a Target Price or Budget Envelope for that Phase has been agreed) the probability associated with the Target Price or, as the case may be, Budget Envelope for that Phase; and
- (E) costs presented in real terms and (if the relevant Funding Regime has been agreed) costs which use the same price base as agreed as part of that Funding Regime.

13.3 Baseline Operational Cost Models

HS2 Ltd shall prepare for approval by the SoS (by a date to be specified by the SoS) and thereafter maintain a Baseline Operational Cost Model covering each Phase which takes into account HS2 Ltd's obligations in Clauses 8.2, 8.3 and 8.4, is prepared on the basis of consistent assumptions with the Baseline Cost Model for that Phase and includes as a minimum:

- (A) the expected annual operational cost profile;
- (B) the total of the sums of the annual operational cost profile; and
- (C) any other matter specified in the Financial Annex.

The period covered by the Baseline Operational Cost Model, together with any discount rates or alternative means of comparing costs between different years shall be specified in the Financial Annex.

13.4 Benefits Baseline

- (A) HS2 Ltd shall maintain a Benefits Baseline in respect of the Core Programme Benefits and Wider Programme Benefits which takes into account HS2 Ltd's obligations in Clause 4.1(G) and includes as a minimum baseline levels of achievement sought for all Core Programme Benefits and Wider Programme Benefits.
- (B) In respect of the Wider Programme Benefits, HS2 Ltd shall:
 - (1) share tools and processes created for Core Programme Benefits with Wider Programme Benefits stakeholders as requested by those stakeholders; and

- (2) collate benefits data provided to it by Wider Programme Benefits stakeholders to create, maintain and report on the Wider Programme Benefits baseline, subject to the agreements and exemptions in Clause 23.

13.5 Purposes

The Baseline Delivery Schedule, Baseline Cost Model, Baseline Operational Cost Model and Benefits Baseline for each Phase shall be used as a baseline against which the following can be reported on:

- (A) in each Monthly Delivery Report;
 - (1) an assessment of the progress of the relevant Phase; and
 - (2) an analysis of the performance indicators referred to in the Baseline Delivery Schedule and Baseline Cost Model; and
- (B) at a frequency to be agreed between the Parties following their approval pursuant to Clauses 13.3 and 13.4, an analysis of the performance indicators referred to in the Baseline Operational Cost Model and Benefits Baseline.

13.6 Agreement and updating of the Baseline Delivery Schedule, Baseline Cost Model, Baseline Operational Cost Model and Benefits Baseline

- (A) Part 1 (Baseline Delivery Schedule for Phase One) of Annex 4 (Baselines) sets out the Baseline Delivery Schedule for Phase One as agreed between the Parties as at the date of this Agreement.
- (B) Part 2 (Baseline Cost Model for Phase One) of Annex 4 (Baselines) sets out the Baseline Cost Model for Phase One as agreed between the Parties as at the date of this Agreement.
- (C) Part 3 (Baseline Delivery Schedule for Phase 2a) of Annex 4 (Baselines) sets out the Baseline Delivery Schedule for Phase 2a as agreed between the Parties as at the date of this Agreement.
- (D) Part 4 (Baseline Cost Model for Phase 2a) of Annex 4 (Baselines) sets out the Baseline Cost Model for Phase 2a as agreed between the Parties as at the date of this Agreement.
- (E) Part 5 (Benefits Baseline for Phase One) of Annex 4 (Baselines) sets out the Benefits Baseline for Phase One as agreed between the Parties as at April 2018.
- (F) Part 6 (Baseline Delivery Schedule for Phase 2b) of Annex 4 (Baselines) sets out the Baseline Delivery Schedule for Phase 2b as agreed between the Parties as at June 2018.
- (G) Part 7 (Baseline Cost Model for Phase 2b) of Annex 4 (Baselines) sets out the Baseline Cost Model for Phase 2b as agreed between the Parties as at June 2018.
- (H) The Parties shall:

(1) in conjunction with the development of the relevant Budget Envelope pursuant to Clause 31.1, or the assessment or reassessment of the relevant Target Price pursuant to Clause 31.2 or 31.3 and a risk-based evaluation of the HS2 Ltd Dependency Milestone Dates and SoS Dependency Milestone Dates; or

(2) at any other time if the Parties agree,

reassess and, if agreed in accordance with Clause 31.1 or, as the case may be, Annex 7 (Change Procedure), revise the Baseline Delivery Schedule, the Baseline Cost Model, the Baseline Operational Cost Model and/or the Benefits Baseline for the relevant Phase.

13.7 If:

(A) a re-baselining of the Baseline Delivery Schedule, the Baseline Cost Model, the Baseline Operational Cost Model or the Benefits Baseline for a Phase is determined to be appropriate pursuant to a Change or a SoS Retained Risk Event; or

(B) the Parties otherwise agree it is necessary and appropriate to re-baseline the Baseline Delivery Schedule, the Baseline Cost Model, the Baseline Operational Cost Model or the Benefits Baseline for a Phase (provided that in circumstances where one party reasonably requests a re-baselining of the Baseline Delivery Schedule, the Baseline Cost Model, the Baseline Operational Cost Model or the Benefits Baseline for a Phase and the other Party unreasonably refuses such a request, the proposing Party can invoke the Dispute Resolution Procedure),

the Parties shall effect any such re-baselining in accordance with Annex 7 (Change Procedure).

13.8 HS2 Ltd shall be responsible at all times for maintaining an up-to-date version of the Baseline Delivery Schedule, Baseline Cost Model, Baseline Operational Cost Model and the Benefits Baseline for each Phase from the dates required by this Agreement. If the Parties agree in writing (pursuant to a Change or otherwise) to amend the Baseline Delivery Schedule and/or the Baseline Cost Model and/or the Baseline Operational Cost Model and/or the Benefits Baseline for a Phase, HS2 Ltd shall produce a revised version of such Baseline Delivery Schedule and/or Baseline Cost Model and/or Baseline Operational Cost Model and/or the Benefits Baseline in accordance with this Clause 13.8 (for the purposes of this Clause 13, a "Revised Baseline Delivery Schedule" or "Revised Baseline Cost Model" or "Revised Baseline Operational Cost Model" or "Revised Benefits Baseline", for that Phase) 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.

13.9 The Parties shall use the Revised Baseline Delivery Schedule, Revised Baseline Cost Model, Revised Baseline Operational Cost Model or Revised Benefits Baseline for a Phase unless and until it is amended again in accordance with this Agreement.

13.10 When a Revised Baseline Delivery Schedule, Revised Baseline Cost Model, Revised Baseline Operational Cost Model or Revised Benefits Baseline for a Phase is issued by HS2 Ltd in accordance with Clause 13.8, it shall supersede any previous versions and shall constitute the definitive version of the Baseline Delivery Schedule, Baseline

Cost Model, Baseline Operational Cost Model or Benefits Baseline (as the case may be) for that Phase.

14. **Statutory Framework and Consents**

14.1 **Nominated Undertaker Appointment**

Following the coming into force of any Core Programme Act, the SoS shall make an order for the appointment of HS2 Ltd as the nominated undertaker for the Works relating to such Core Programme Act.

14.2 **Undertakings and Assurances**

(A) HS2 Ltd shall comply with the Undertakings, Assurances and Requirements which relate to a matter for which HS2 Ltd is the nominated undertaker or for which it is responsible under this Agreement until allocated to any third party other than a Delivery Sub-Contractor pursuant to the provisions of this Clause 14.2 (each an "HS2 Ltd Undertaking").

(B) The SoS shall provide HS2 Ltd with details of any undertakings and assurances in connection with the Core Programme (or a Phase thereof) which should be included in the Register of Undertakings and Assurances and which are not otherwise in the awareness of HS2 Ltd.

(C) HS2 Ltd shall facilitate a process, in discussion with the SoS, by which the responsibility for complying with the undertakings, assurances or requirements included within the Undertakings, Assurances and Requirements shall be allocated appropriately between SoS, HS2 Ltd and such other parties or nominated undertakers as may be determined to be relevant and accepted by each relevant party (the "UAR Allocation Process"). The SoS and HS2 Ltd shall use all reasonable endeavours to complete the UAR Allocation Process for all undertakings, assurances and requirements included within the Undertakings, Assurances and Requirements for each Phase on or before such dates as the SoS may notify HS2 Ltd in writing.

(D) The UAR Allocation Process shall be ongoing throughout the Core Programme such that if either:

(1) new undertakings, assurances or requirements given after the completion of the UAR Allocation Process for the Undertakings, Assurances and Requirements in accordance with Clause 15.1(I) are identified as being part of or added to the Undertakings, Assurances and Requirements during the Core Programme; or

(2) an undertaking, assurance or requirement which is part of the Undertakings, Assurances and Requirements that has previously been allocated ought reasonably to be reallocated having regard to the current circumstances of the Core Programme,

the relevant undertakings, assurances or requirements shall be allocated or reallocated (as the case may be) pursuant to the UAR Allocation Process.

(E) HS2 Ltd may agree with the beneficial recipient or recipients, as the case may be, of an HS2 Ltd Undertaking, amendments, changes, waivers or any other

alterations to the terms of that HS2 Ltd Undertaking provided that, at least 30 Working Days (or less if agreed otherwise between the Parties) prior to agreeing any such amendments, changes, waivers or alterations, it notifies the SoS, consults with him/her in a timely manner, and accommodates his/her comments. Nothing in this Clause 14.2(E) shall be construed as authorising HS2 Ltd to amend, change, waive or in any way alter the terms of an undertaking given by the SoS to Parliament.

- (F) HS2 Ltd shall notify, if relevant, the local authority of the geographical area to which the HS2 Ltd Undertaking relates of the new agreed terms of any HS2 Ltd Undertaking that has been amended in accordance with Clause 14.2(E) and shall comply with the new agreed terms of that HS2 Ltd Undertaking.
- (G) HS2 Ltd shall maintain robust processes to monitor, manage, evidence and document compliance with all HS2 Ltd Undertakings. This shall include ensuring that, if necessary, an adequate commitments compliance plan (a "**CCP**") is drawn up by each responsible delivery party specifying the activities that will be performed in order to demonstrate compliance with each relevant HS2 Ltd Undertaking, the deliverables that will be supplied to evidence such compliance and the frequency of the deliverables.
- (H) HS2 Ltd shall maintain up to date electronic records (a "**UAR Tracking System**") to:
 - (1) monitor compliance (including the extent to which each Undertaking, Assurance and Requirement has been discharged) with all Undertakings, Assurances and Requirements (provided that, in respect of Undertakings, Assurances and Requirements which do not constitute HS2 Ltd Undertakings, HS2 Ltd's obligation shall only extend to recording any such information that it is aware of); and
 - (2) track evidence supplied by each responsible delivery party as part of their CCP,and HS2 Ltd shall provide to the SoS such information that it reasonably requires (relating to Undertakings, Assurances and Requirements) which is held on the UAR Tracking System.
- (I) HS2 Ltd shall report all material updates to the UAR Tracking System, including material progress towards discharge of each Undertaking, Assurance and Requirement (in each case to the extent required by paragraph (H) above):
 - (1) within each Monthly Delivery Report; and
 - (2) promptly upon request from the SoS.
- (J) HS2 Ltd shall, on a six monthly basis, provide to the SoS an assurance statement ("**Assurance Statement**"), signed by the Chief Executive of HS2 Ltd, setting out the following matters:
 - (1) all material updates to the UAR Tracking System since the date of the last Assurance Statement, including broad progress and key trends towards

discharge of all Undertakings, Assurances and Requirements and whether they are likely to be discharged within the planned timeline for their discharge;

- (2) any breach or reasonable likelihood of a breach by any person of any Undertaking, Assurance and Requirement and a brief summary of the related mitigation plan and corrective action taken; and
- (3) any variations to any Undertaking, Assurance and Requirement sought,

provided that, in respect of Undertaking, Assurances and Requirements which do not constitute HS2 Ltd Undertakings, HS2 Ltd's obligations shall only extend to reporting any such information that it is aware of.
- (K) When the commitments contained within any HS2 Ltd Undertakings are considered by HS2 Ltd to have been discharged and HS2 Ltd is satisfied that the evidence requirements set out in the relevant CCP have been fulfilled it shall, at least 30 Working Days prior to confirming discharge of the relevant HS2 Ltd Undertaking notify the SoS and consult with him/her in a timely manner in order to accommodate his/her comments.
- (L) HS2 Ltd shall exercise its functions as nominated undertaker and otherwise perform its obligations under this Agreement and the Delivery Contracts in such manner as to ensure that the SoS shall not be in breach of, and the SoS may properly perform, any obligations that he/she owes to third parties under the Delivery Contracts and/or any undertakings and/or assurances and/or requirements given to any third party under the Undertakings, Assurances and Requirements.
- (M) HS2 Ltd shall promptly serve notice on the SoS if it becomes aware that any person has failed, or is reasonably likely to fail, to comply fully with the Undertakings, Assurances and Requirements or that it has otherwise breached, or is reasonably likely to breach, its obligations pursuant to Clause 14.2(A) (such failure or breach being a "UAR Default"). Such notice shall include reasonable details of the UAR Default.
- (N) HS2 Ltd shall, at such time and within such period as may be specified in any HS2 Ltd Undertaking or as may otherwise be reasonably required by the SoS, execute and deliver to the relevant party any deeds or agreements required by those undertakings, assurances or requirements and in the form reasonably required by the relevant undertaking, assurance or requirement or, if no such form is provided for, then in the form reasonably required by the SoS.
- (O) If the SoS becomes aware (other than as a result of a notice from HS2 Ltd pursuant to Clause 14.2(J)) that a UAR Default has occurred or is, in the reasonable opinion of the SoS, likely to occur, the SoS may serve notice on HS2 Ltd providing details of the UAR Default.
- (P) Following service of a notice by either HS2 Ltd or the SoS identifying a UAR Default, HS2 Ltd shall promptly provide such additional information in relation to the UAR Default as the SoS may reasonably request.
- (Q) Following service of a notice by either HS2 Ltd or the SoS identifying a UAR Default, HS2 Ltd shall take such action as it considers necessary to procure

the rectification of the UAR Default (or to put in place a plan to rectify the UAR Default) within a reasonable period of time, taking account of the circumstances prevailing at the time, provided that HS2 Ltd:

- (1) shall not be entitled to any relief from its other obligations pursuant to this Agreement and shall not take any action that would contravene, or which might result in a contravention of, this Agreement; and
- (2) shall procure the rectification of the UAR Default in accordance with any requirements, deadlines or other restrictions relating to the UAR Default imposed upon the SoS by Parliament,

and HS2 Ltd shall keep the SoS updated with its plans for, and progress in relation to, this rectification.

- (R) If HS2 Ltd has not rectified the UAR Default within a reasonable period of time in accordance with Clause 14.2(Q), or the SoS does not agree with HS2 Ltd's plan for procuring such rectification, then the SoS shall be entitled to take such action as he/she reasonably considers is necessary to enable rectification of the UAR Default provided that the SoS shall notify HS2 Ltd in advance of what action he/she wishes to take and the timetable for so doing.
- (S) In considering what action (if any) he/she wishes to take pursuant to Clause 14.2(R) the SoS shall use reasonable endeavours to minimise the impact of such action on the discharge by HS2 Ltd of its obligations pursuant to this Agreement but HS2 Ltd shall not be entitled to any relief as a result of the taking of such action.
- (T) HS2 Ltd shall indemnify the SoS against:
 - (1) any third party actions or claims; and/or
 - (2) any costs incurred by the SoS in taking action pursuant to Clause 14.2(R),as a consequence of any UAR Default.

14.3 Co-operation with other Infrastructure Managers and Operators

- (A) HS2 Ltd agrees to provide such co-operation, assistance and information as any Operator (including the WCP Franchisee) and/or Infrastructure Manager may reasonably request (having regard to the nature of HS2 Ltd's roles and purpose under this Agreement and without prejudice to its own obligations under Clause 15) to enable them to:
 - (1) obtain such Consents as are necessary to discharge their statutory duties; and
 - (2) where applicable, prepare and establish a Safety Management System and (where applicable) a Safety Verification Scheme,each to the extent applicable to such Operator and/or Infrastructure Manager.
- (B) Such co-operation, assistance and information to be provided by HS2 Ltd pursuant to Clause 14.3(A) shall include:

- (1) the preparation of the relevant parts of any submissions in respect of any Safety Certificate or Safety Authorisation or any Safety Management System or (where applicable) Safety Verification Scheme;
- (2) the provision of necessary information, drawings and reports; and
- (3) assistance with, and attendance at, inspections by any Government Authority or tests or trials required by any Government Authority or to satisfy any Applicable Law or Applicable Standard.

14.4 **Planning Consents**

The Parties acknowledge that, once any Core Programme Act (which includes provisions relating to planning permission for the Core Programme) comes into force, such Core Programme Act shall deem planning permission to be granted under Part 3 of the Town and Country Planning Act 1990 for the carrying out of development authorised by that Core Programme Act, subject to its terms and to any further necessary approvals as may be required.

14.5 **Other Consents**

With the exception of the approvals referred to in Clause 14.4, HS2 Ltd shall procure that all Consents necessary for the management, development or delivery of the Core Programme are obtained and maintained in force for the duration of this Agreement. Where any Operator will also require such Consents for the operation, repair or maintenance of any part of the Railway, HS2 Ltd shall use all its reasonable endeavours to ensure that such Consents are obtained on a basis that will ensure that any Operator of the Railway enjoys the benefits of those Consents (but without requiring HS2 Ltd to prejudice its own ability to fulfil its obligations under this Agreement).

15. **Health and Safety**

15.1 **CDM Regulations**

- (A) For the purposes of this Clause 15, the terms "Client", "Health and Safety File", "Principal Designer" and "Principal Contractor" have the same meanings as the equivalent uncapitalised terms have in the CDM Regulations. Without prejudice to any other provision in this Agreement, in this Clause 15 only, "project" shall have the same meaning as given to it in the CDM Regulations.
- (B) Unless otherwise agreed by the SoS, HS2 Ltd agrees (or shall procure that an appropriate third party (a "**Third Party Client**") agrees) to be treated as the only Client in respect of each and every project in relation to the Works. HS2 Ltd shall not (and shall procure that any Third Party Client shall not) seek to withdraw, terminate or in any manner derogate from such agreement. The SoS shall confer on HS2 Ltd such authority as HS2 Ltd (or the Third Party Client) may reasonably require in order to discharge its duties as Client under the CDM Regulations.
- (C) The SoS hereby consents to HS2 Ltd (or a Third Party Client, as applicable) being treated as the only Client in respect of any project in relation to the Works for the purpose of the CDM Regulations, as set out in Clause 15.1(B) above.

- (D) Where HS2 Ltd procures agreement from a Third Party Client to be treated as the only Client in respect of a project, HS2 Ltd shall:
 - (a) take all reasonable measures to satisfy itself that such Third Party Client has the skills, knowledge, experience and organisational capability to carry out and fulfil the role of Client; and
 - (b) promptly provide the SoS with the identity of the Third Party Client together with brief details of the written agreement containing the Third Party Client's appointment (to include date and description of works package as a minimum).
- (E) HS2 Ltd shall (and shall procure that any Third Party Client shall) observe, perform and discharge and/or shall procure the observance, performance and discharge of all of the Client's obligations, requirements and duties arising under the CDM Regulations in connection with Works and shall do so in accordance with any code of practice for the time being approved by the Health and Safety Commission pursuant to the Health & Safety at Work etc. Act 1974.
- (F) Where HS2 Ltd is acting as the Client in relation to a project, HS2 Ltd shall be responsible for ensuring that the Principal Designer (or, if the Principal Designer's appointment concludes before completion of the project, the Principal Contractor) establishes and maintains the Health and Safety File relating to that project and makes such Health and Safety File available for inspection by the SoS at any reasonable time. On or before the completion date for each Phase, HS2 Ltd shall provide the SoS, on request, with electronic copies (or if requested by the SoS, certified hard copies) of such Health and Safety File.
- (G) Where a Third Party Client is acting as the Client in relation to a project, HS2 Ltd shall procure that the Third Party Client ensures the Principal Designer (or, if the Principal Designer's appointment concludes before completion of the project, the Principal Contractor) establishes and maintains the Health and Safety File relating to that project.
- (H) Upon HS2 Ltd's reasonable request, the SoS shall provide to HS2 Ltd (or any Third Party Client) such information and assistance as HS2 Ltd may reasonably require in order to discharge (or to enable any Third Party Client to discharge) its duties as Client under the CDM Regulations.
- (I) As between HS2 Ltd, any Third Party Client and the SoS, the SoS shall not have any responsibility or liability to HS2 Ltd or any Third Party Client for the safety of any design which forms part of the Works and, without prejudice to the foregoing provisions of this Clause 15, HS2 Ltd shall (and shall procure that any Third Party Client shall) either retain or impose on the Delivery Contractors, such responsibility, together with a responsibility to ensure the adequacy, stability and safety of all site operations and methods of construction which HS2 Ltd shall impose on the Delivery Contractors.

15.2 Health and Safety Legislation and ROGS

HS2 Ltd shall comply with all Health and Safety Legislation applicable to its roles in respect of the Core Programme including its responsibility for managing the operation

of the Railway in its capacity as the Infrastructure Manager under ROGS of the Infrastructure, including for the avoidance of doubt all applicable safety methodologies and regulations on risk assessment and evaluation.

15.3 Interoperability

HS2 Ltd shall be the contracting entity and shall be responsible for ensuring compliance of the Works with Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the community and the Railways (Interoperability) Regulations 2011.

15.4 Health and Safety Management System

HS2 Ltd shall develop and maintain throughout the duration of this Agreement a health and safety management system certified by a UKAS accredited certification body to BS OHSAS 18001.

16. Land and Property

16.1 Land & Property Strategy

(A) HS2 Ltd has developed a land and property strategy (the "Land & Property Strategy") that sets out how Land (including the Additional Land) is proposed to be acquired, managed and disposed of, and includes:

- (1) a long-term overall plan for the acquisition, management and disposal of both the Core Land and the Additional Land;
- (2) an approach for each aspect of Land acquisition, management and disposal;
- (3) policies at the appropriate level of detail to cover the acquisition, management, and disposal of property and the reporting thereof (to be supplied as part of the general Management Information), and the codes of practice HS2 Ltd will adhere to in its interactions with the public;
- (4) provision for periodic plans, which will build on the overall plan set out in the Land & Property Strategy and provide detail on the proposed acquisition, management and disposal of Land for the relevant period (each a "Periodic Land and Property Plan") and will be submitted to the SoS for approval; and
- (5) an outline of the format and content of business cases and supporting information that will be provided to the SoS so that he/she can make an informed decision on purchases, management and disposals of Land that will be in the SoS's name.

(B) The Parties shall at all times in respect of all matters relating to Core Land and Additional Land, act in accordance with the provisions of the Land & Property Strategy and any relevant Periodic Land and Property Plan and, in so far as a Party has rights or obligations in accordance with this Clause 16, it shall exercise such rights or comply with such obligations in accordance with the relevant provisions of the Land & Property Strategy and any relevant Periodic Land and Property Plans.

- (C) The Land & Property Strategy shall be kept under review by HS2 Ltd and updated as necessary. Any amendments shall be submitted to the SoS for approval.

16.2 Delivery of full title for end state Railway

By a date to be agreed between the Parties, HS2 Ltd shall develop a plan, and obtain the SoS's approval of the same, that sets out how HS2 Ltd will establish the final package of Land that is required for delivery of full title to the end state Railway.

16.3 Land acquisition and standard documentation

- (A) HS2 Ltd shall notify the SoS in writing of the details of the Core Land it recommends to be acquired by the SoS in accordance with its Land & Property Strategy.
- (B) HS2 Ltd shall submit to the SoS for approval, from time to time, standard acquisition, management and disposal documentation which, once approved by the SoS, will be used by HS2 Ltd as a template for acquisition, management and disposal of Core Land and Additional Land.
- (C) The SoS shall:
 - (1) upon receipt of written notification pursuant to Clause 16.3(A) above, review such written notification and confirm in writing whether or not he/she approves the recommendation; and
 - (2) if and to the extent that the SoS has approved the recommendation to acquire Core Land or Additional Land, take all reasonable and proper steps to facilitate the acquisition exercise referred to in Clause 16.3(D) below.
- (D) The SoS appoints HS2 Ltd to be his/her agent for the purposes of the Land acquisition detailed in this Clause 16.3 and HS2 Ltd shall, subject to having received the prior approval from the SoS in connection with the relevant Land:
 - (1) act as the agent of the SoS in respect of the acquisition of Land in the name of the SoS;
 - (2) draft, settle, sign in its capacity as agent of the SoS, (save for documents which require the seal of the SoS to be attached to them or to be signed by the SoS, which shall be submitted by HS2 Ltd or its external solicitors to the SoS for execution) serve, exchange and complete on behalf of the SoS all such documentation as necessary in respect of the same;
 - (3) complete on behalf of the SoS the registration of and all other necessary procedures (including all Stamp Duty Land Tax returns and documentation necessary to exercise an option to tax) in relation to the relevant transfer of the Land, with the Land Registry;
 - (4) maintain securely all records and details relating to any real estate matters on the e-PIMS software (or such successor software advised by the SoS from time to time) and make this information available to the SoS within 10 Working Days of any property transaction (be it acquisition or disposal (including letting) or the taking of occupation of any property) and record electronically

all land and property boundaries on a geographical information system map linked to e-PIMS; and

- (5) within 20 Working Days of any property transaction, or if later within 20 Working Days of registration of any property transaction at the Land Registry, ensure that all legal, management and other property-related records relating to the transaction shall be retrieved from any consultants or other external advisers and ensure that those records together with HS2 Ltd records are stored securely in storage arrangements agreed with the SoS to ensure long term access and record safety.
- (E) In respect of any Land subject to compulsory purchase pursuant to any Core Programme Act, acquisition shall be by General Vesting Declaration (unless the SoS shall decide otherwise and notify HS2 Ltd in writing in respect of any particular transaction or class of transactions). There shall be a presumption against using Notices to Treat and Notices of Entry rather than General Vesting Declaration except in the case of land needed for temporary purposes.

16.4 Management Land

- (A) In relation to:
 - (1) Core Land for the period until vacant possession of the relevant Core Land is required for the construction and related aspects of the Core Programme (as contemplated by Clause 16.7);
 - (2) Core Land for the period following completion of the construction and related aspects of the Core Programme (as contemplated by Clause 16.7) on the relevant Core Land, but before such Land is comprised in the O&M Leases(s); and
 - (3) Additional Land generally,

(together, the "Management Land"), HS2 Ltd shall use reasonable endeavours to obtain commercial value for money in respect of the same and shall manage the relevant parcels of land in accordance with its Land & Property Strategy, the principles of good estate management, and any relevant wider Government policy (unless otherwise required by, or agreed with, the SoS).
- (B) If agreed between the Parties, the SoS shall grant, and HS2 Ltd shall acquire, a leasehold interest in the Management Land (the "Management Lease") on terms to be agreed between the Parties as soon as reasonably practicable.
- (C) If a Management Lease is granted to HS2 Ltd, it:
 - (1) may (in connection with its obligation under Clause 16.4(A) and on the terms of the Management Lease) grant third party leases or licences in respect of any Management Land;
 - (2) shall perform the duties specified in the Management Lease; and

- (3) shall obtain vacant possession of, and subsequently surrender that part of its leasehold interest that it holds in, any Management Land as necessary to enable the commencement of the Works in accordance with Clause 12.5(A).
- (D) Until such time as a Management Lease is granted (or if the grant of a Management Lease is not agreed between the Parties), HS2 Ltd:
 - (1) may (in connection with its obligations in Clause 16.4(A)) recommend to the SoS that third party leases or licences are granted in respect of any Management Land and, (save as otherwise agreed) subject to the approval to the terms of such lease or licence, HS2 Ltd shall act as agent of the SoS in connection with the negotiation and completion of the same (save in respect of any documents that require the seal of the SoS to be attached to them which shall be submitted by HS2 Ltd to the SoS for execution);
 - (2) shall perform the following management duties in respect of the Management Land:
 - (a) manage, collect rent, maintain and secure all Management Land at its own cost;
 - (b) comply with any undertakings, assurances and obligations relating to the Management Land at its own cost; and
 - (c) pay all taxes, rates, outgoings, duties, charges and impositions (whether parliamentary, parochial or otherwise) lawfully assessed, charged or payable on all and any of the Management Land; and
 - (3) shall perform the functions specified in Clause 16.4(C)(3) as agent for the SoS,

and the SoS appoints HS2 Ltd to be his/her agent for such purposes and such duration.
- (E) The Parties will seek to agree the terms relating to the income from any third party occupation of Management Land in respect of the period falling prior to entry by both Parties into the Management Lease.

16.5 Temporary Rights

In relation to any Land which is only required temporarily, HS2 Ltd shall occupy and/or use the same in accordance with the powers given to it in its role as nominated undertaker (as appointed under Clause 14.1 or otherwise) under any Core Programme Act and as further provided for in the Land & Property Strategy.

16.6 Ownership

The SoS shall be the long-term owner of the freehold interest in the Core Land and the Additional Land.

16.7 Construction licence

The SoS (but only for so long as he/she is the (legal and/or beneficial) owner of the Core Land) will grant to HS2 Ltd a licence, together with the right to sub-license to

the Delivery Contractors, other contractors and/or consultants, to use all Core Land once vacant possession of that Land is required by HS2 Ltd to discharge its obligations and exercise its rights in respect of the construction and related aspects of the Core Programme and comply with any and all of its obligations under this Agreement. For the avoidance of doubt, such licence shall not apply in respect of any Land which is included in any Management Land Lease or any O&M Lease.

16.8 **O&M Land**

In respect of each Phase, the SoS and HS2 Ltd shall seek to agree the terms of the lease(s) (the "O&M Lease(s)") to be granted by the SoS to HS2 Ltd of the relevant Core Land and Additional Land, in each case required by HS2 Ltd to discharge its obligations and exercise its rights in respect of the operation and maintenance of the Railway (the "O&M Land"), and following such agreement the Parties shall enter into O&M Leases at the appropriate time (anticipated to be on or around the start date for trial operations of the High Speed Services as contemplated by the Franchise Agreement).

16.9 **Disposal of Land**

HS2 Ltd shall consult with the SoS before the disposal of any Core Land, Management Land, Additional Land or O&M Land acquired and owned by the SoS and comply with the Crichel Down Rules or any other policies which may be introduced. The terms relating to any revenue generated by such disposals are set out in paragraph 8 of the Financial Annex.

16.10 **Exclusion of warranties**

HS2 Ltd hereby acknowledges that no representation or warranty has been given prior to the date hereof or is given or implied by this Agreement or any other agreement in connection with the Core Programme by the SoS that the Land or any existing infrastructure, structures, foundations and services are or will be fit or adequate for any particular purpose including for the purpose of enabling HS2 Ltd to comply with its obligations under this Agreement or otherwise in connection with the Core Programme.

16.11 **Safeguarding**

- (A) HS2 Ltd shall, in accordance with its duties as set out in the safeguarding directions, promptly (and in any case within any time limits for response set out in the safeguarding directions) administer and respond to all notifications and requests for approval sent to it by local authorities pursuant to such safeguarding directions, having considered whether they conflict with the Railway, and giving direction to the local authority accordingly.
- (B) HS2 Ltd shall manage and produce the safeguarding guidance and maps on behalf of the SoS and the SoS shall draft the safeguarding directions.

17. **Assets**

- 17.1 For the purposes of this Agreement, "Assets" means all assets and rights required to enable the SoS or a successor delivery vehicle to manage, develop and deliver the Core Programme, including:

- (A) any Land;
- (B) any Infrastructure;
- (C) the Railway;
- (D) any equipment;
- (E) any information technology;
- (F) any books and records (including all maintenance, health and safety, operation and training manuals, know-how and those records referred to in Clause 23.8);
- (G) any spare parts, tools and other assets (including those used for maintenance);
- (H) the benefit of the Delivery Contracts and the Delivery Sub-Contracts;
- (I) any rights of HS2 Ltd against third parties arising out of or in connection with the management, development and/or delivery of the Core Programme; and/or
- (J) any intellectual property rights.

17.2 Throughout the duration of this Agreement, HS2 Ltd shall undertake routine repairs and maintenance of the Assets which it owns or for which HS2 Ltd has responsibility.

17.3 HS2 Ltd shall, from the Effective Date, prepare and maintain an Asset Register (in such form as may be proposed by HS2 Ltd and approved by the SoS from time to time) which shall:

- (A) set out details of all Assets which are known to HS2 Ltd; and
- (B) specify those Assets which are (at the time such register is prepared or updated) in the possession, ownership or control of HS2 Ltd,

and such Asset Register shall be regularly updated to reflect any change in the nature and/or identity of the relevant Assets.

17.4 HS2 Ltd shall, at the request of the SoS at any time, provide to him a copy of the up-to-date Asset Register in order to demonstrate that HS2 Ltd has complied with its obligation to maintain and update the Asset Register under Clause 17.3.

17.5 In the event of any termination of this Agreement, the future transfer of ownership of HS2 Ltd to a third party, the sale of the whole or part of the HS2 Ltd business or any outsourcing or concessioning of the whole or part of the Railway or the Operations, HS2 Ltd shall, at the SoS's request and at the direction of the SoS:

- (A) transfer its rights, title and interest in and to any or all of the Assets (to the extent HS2 Ltd is within its lawful power to do so) to the SoS (or any third party nominated by the SoS) for the market value of such Assets less the amount in respect of such Assets which has been funded by the SoS, or is derived from funding received from the SoS;

- (B) transfer all maintenance, health and safety, operation and training manuals and/or all other relevant documentation with any Assets transferred pursuant to Clause 17.5(A);
- (C) use reasonable endeavours to procure the assignment or transfer of the benefit of any manufacturers' guarantees, warranties, licences and service records in respect of any Assets transferred pursuant to Clause 17.5(A); and
- (D) (save as otherwise agreed with the SoS) novate or assign any or all the Delivery Contracts to the SoS or any third party nominated by the SoS.

18. **Functions**

18.1 **Appointment**

The SoS appoints HS2 Ltd to carry out:

- (A) the Bill Design Development Functions;
- (B) the Bill Support Functions;
- (C) the Routine Advice & Policy Support Functions;
- (D) the Non-Routine Advice & Policy Support Functions;
- (E) the Promotion, Engagement and Communications Functions; and
- (F) functions relating to the operation and management of the property schemes specified in the Land & Property Strategy.

subject to the terms of this Agreement.

18.2 **Bill Design Development Functions**

- (A) HS2 Ltd shall perform all design development functions for any Bill and any additional provision to that Bill in respect of any Phase (or sub-phase thereof) (the "Bill Design Development Functions") which shall include:
 - (1) developing the design for the purposes of that Phase (which shall be subject to the approval of the SoS) to a sufficient level of detail to enable the depositing of that Bill, which shall include:
 - (a) an assessment of the environmental impact; and
 - (b) using reasonable endeavours to ensure that commercial opportunities are designed into the hybrid Bill whenever it is practicable, affordable, offers value for money and is consistent with HS2 Ltd's obligations in law.
 - (2) complying with Parliamentary standing orders relevant to that Bill;
 - (3) supporting the SoS on the consultation in relation to the supplementary environmental information and/or draft "Environmental Statement" in order to deposit that Bill; and

- (4) advising on the content of that Bill (including advice on any impact or cost/benefit assessment of that Bill).
- (B) The Parties acknowledge that the Bill Design Development Functions for Phase 2b (save for any specific preparatory work which is required by the SoS) shall not commence until the date of the Phase 2b Post-Consultation Route Announcement.

18.3 Bill Support Functions

HS2 Ltd shall perform all support functions relating to any Bill for any Phase (the "Bill Support Functions") which shall include:

- (A) leading the support of such Bill and providing functions specifically related to assisting the SoS to secure passage of such Bill, including providing information papers (which shall be subject to the approval of the SoS);
- (B) leading the management of the Select Committee stage by providing logistics management, exhibits and witnesses and briefing counsel;
- (C) managing petitioners in relation to that Phase;
- (D) supporting the SoS in the negotiation of any protective provisions agreements relating to the Core Programme;
- (E) supporting the SoS in the establishment and maintenance of the Register of Undertakings and Assurances; and
- (F) highlighting to the SoS the timing and cost implications for that Phase resulting from the Bill Support Functions referred to in this Clause 18.2(B).

18.4 Advice & Policy Support Functions

HS2 Ltd shall perform the Routine Advice & Policy Support Functions and the Non-Routine Advice & Policy Support Functions.

(A) Routine Advice & Policy Support Functions

HS2 Ltd shall perform all day-to-day and routine advice and policy support functions and information relating to the Core Programme and the Wider Programme Benefits (the "Routine Advice & Policy Support Functions"), which shall include:

- (1) providing day-to-day support on information requests for submissions, briefing, Parliamentary questions and correspondence, which is unplanned and generally low level (except for certain key events such as Select Committees);
- (2) providing support for Parliamentary Select Committee processes, National Audit Office assessments and any judicial reviews; and
- (3) providing analysis and analytical capability to:

- (a) support the Business Case development in accordance with the Green Book;
- (b) develop and maintain modelling capability;
- (c) deliver the Analytical Work Programme; and
- (d) support in setting safeguarding directions and guidance relating to the Core Programme.

(B) Non-Routine Advice & Policy Support Functions

- (1) HS2 Ltd shall perform all additional, non-routine advice and policy support functions relating to the Core Programme and the Wider Programme Benefits (the “Non-Routine Advice & Policy Support Functions”) set out in the Non-Routine Advice & Policy Support Functions Record which shall comprise:
 - (a) the additional, non-routine advice and policy support functions for the Core Programme and the Wider Programme Benefits which are agreed as at the date of this Agreement;
 - (b) all additional non-routine advice and policy support functions as may be instructed by the SoS or the Client Board pursuant to a NRAPSI relating to any request for advice and/or information to support departmental decision-making (including but not limited to additional analytical support, land and property policy advice and/or advice on major route decisions relating to the Core Programme);
 - (c) non-routine advice and policy support functions relating to the development and management of, and reporting on, the benefits specified in the Benefits Baseline (or, prior to finalisation of that model, all benefits delivered by the Core Programme and the Wider Programme); and
 - (d) non-routine advice and policy support functions relating to building capabilities within partner organisations that form part of the Core Programme and the Wider Programme.
- (2) The SoS may issue a NRAPSI at any time. When undertaking the scope of work required by a NRAPSI, HS2 Ltd shall comply with Clause 18.4(B)(3) in order to assist the SoS in its departmental decision-making (including but not limited to additional analytical support, land and property policy advice on major route decisions relating to the Core Programme).
- (3) In performing the Non-Routine Advice & Policy Support Functions, HS2 Ltd shall consider the analysis required by the SoS (for the purposes of this Clause 18.4, the “Analysis”) to ensure that HS2 Ltd’s outputs (in respect of the Analysis) are supported by robust evidence, in line with the SoS’s analytical assurance framework “Strength in Numbers”. HS2 Ltd shall also consider the SoS’s requirements for the Analysis against the wider analytical demands of the SoS, HS2 Ltd and Network Rail, to ensure that opportunity costs and risks are identified and that delivery of the Analysis is feasible.
- (4) HS2 Ltd shall be responsible at all times for maintaining an up-to-date version of the Non-Routine Advice & Policy Support Functions Record. Where any

changes to tasks in that document and any additional non-routine advice and policy support functions are instructed by the SoS or the Client Board pursuant to a NRAPSI, HS2 Ltd shall produce a revised version of the Non-Routine Advice & Policy Support Functions Record (for the purposes of this Clause 18.4, the “Revised Non-Routine Advice & Policy Support Functions Record”) incorporating such amendments 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.

- (5) The Parties shall use the Revised Non-Routine Advice & Policy Support Functions Record unless and until it is amended again in accordance with this Agreement.
- (6) When a Revised Non-Routine Advice & Policy Support Functions Record is issued by HS2 Ltd in accordance with Clause 18.4(B)(3), it shall supersede any previous versions and shall constitute the definitive version of the Non-Routine Advice & Policy Support Functions Record.
- (7) If HS2 Ltd does not already have funding allocated to it for any relevant Non-Routine Advice and Policy Support Function within the Budget Envelope or Target Price for the current Phase, or otherwise have funding available to it pursuant to the Financial Annex, then HS2 Ltd shall be entitled (before commencing such Non-Routine Advice and Policy Support Functions) to request additional funding from the SoS.

18.5 Promotion, Engagement and Communications Functions

HS2 Ltd shall perform promotions, engagement and communications functions in relation to the Core Programme (the “Promotion, Engagement and Communications Functions”) which shall include compliance with the following obligations:

- (A) HS2 Ltd will develop and deliver a long-term programme for internal and external communications around the Core Programme Benefits.
- (B) HS2 Ltd will ensure that this programme:
 - (1) provides that HS2 Ltd will act as promoter for the Core Programme to make a strong public case for the Railway in order to build and maintain support amongst the public and as broad a range of external stakeholder organisations and opinion formers as possible;
 - (2) provides for the effective engagement of stakeholders affected by and with an interest in the Railway regarding issues including those relating to service provided, budget and environmental impacts, local and national regeneration and wider benefits and ensures that these are prioritised as necessary;
 - (3) includes engagement with elected members from all major political parties at a national and local level;
 - (4) is informed by strong insight, including regular opinion research and is regularly evaluated against clearly set out metrics; and

- (5) includes details of how HS2 Ltd will work with the DfT (and other stakeholders) in a co-ordinated, transparent and delivery-focused manner, including in the preparation of key announcements for the programme.

18.6 Functions relating to statutory and non-statutory schemes and to compulsory purchase of Core Land

HS2 Ltd shall carry out functions relating to the property schemes specified in the Land & Property Strategy and shall ensure:

- (A) consistency and fairness to all third parties and claimants of such property schemes;
- (B) completion of all statutory and compulsory purchase acquisitions necessary to achieve the critical path for project delivery; and
- (C) value for money.

19. Operations²

19.1 HS2 Ltd's obligations

Unless and until the SoS notifies HS2 Ltd otherwise, HS2 Ltd shall be responsible for:

- (A) managing the operation of the Infrastructure in its capacity as the Infrastructure Manager of the Infrastructure;
- (B) entering into track access agreements with any TOCs; and
- (C) owning, managing and maintaining all rolling stock procured pursuant to the Rolling Stock Contracts.

² The drafting for this Clause 19 will be developed further between the Parties at a later stage of the Programme.

PART 4: FUNDING

20. **Funding**

20.1 **HS2 Ltd's funding obligations**

- (A) HS2 Ltd may use the funding provided by the SoS in accordance with this Clause 20 from time to time for the following purposes (the "Permitted Purposes"):
- (1) for carrying out its obligations, discharging its liabilities and exercising its rights under this Agreement and the Framework Document and the Delivery Contracts including being responsible for and managing all the HS2 Ltd's Core Programme Risks and for discharging all HS2 Ltd's Liabilities;
 - (2) for maintaining HS2 Ltd as a corporate, operational and business entity, including staff and human resource costs, accommodation, information technology infrastructure, Consents, corporate costs, directors' remuneration and other costs to enable HS2 Ltd to meet its obligations under this Agreement;
 - (3) for purposes reasonably ancillary and/or related to the purposes in Clauses 20.1(A)(1) and 20.1(A)(2); and/or
 - (4) for any other purposes expressly agreed by the SoS in writing.
- (B) HS2 Ltd may not use the funding provided by the SoS in accordance with this Clause 20 for any purpose other than the Permitted Purposes.

20.2 **Funding by the SoS**

The Parties agree that the SoS shall provide funding to HS2 Ltd in accordance with the Framework Document, the letter from the Permanent Secretary to HS2 Ltd (with the subject "HS2 Ltd Spending Review 2015 Settlement" dated 22 March 2016) (and any replacements or amendments to such letter), the SRO to CEO annual "Delegation of Responsibilities" letter and the Financial Annex.

PART 5: GOVERNANCE

21. Representatives

- 21.1 The SoS's representative for the purposes of this Agreement shall be the chairperson of the Client Board or such other person(s) as may be identified by the SoS to HS2 Ltd in writing. The SoS's representative has authority to act on the SoS's behalf in connection with this Agreement.
- 21.2 HS2 Ltd's representative for the purposes of this Agreement shall be such person (or replacement) as may be identified by HS2 Ltd to the SoS in writing. Such person shall have full authority to act on HS2 Ltd's behalf in connection with this Agreement.
- 21.3 The SoS may at any time instruct HS2 Ltd to remove any representative identified by HS2 Ltd if, in the SoS's reasonable opinion, that representative's performance or conduct is unsatisfactory. HS2 Ltd shall remove and replace any such representative as soon as is reasonably practicable.

22. Operational Delegations

22.1 **Operational Delegations Conditions**

There shall be an Operational Annex which shall be substantially based on the pro forma set out at Annex 9 (Operational Annex) and shall provide various delegations to HS2 Ltd in the areas of, for example, procurement, contract variation and departures from baseline models, in each case subject to the undertaking of various conditions (the "**Operational Delegation Conditions**") (which letter and conditions shall be subject to consultation between the Parties).

22.2 **Maintaining the Operational Annex**

(A) The SoS shall be responsible at all times for maintaining an up-to-date version of the Operational Annex. If:

- (1) the SoS withdraws any Operational Delegations in accordance with this Agreement (including pursuant to Clause 25.2(C) or Clause 25.2(D)) or
- (2) at any time the Parties agree that amendments are required to the Operational Annex,

the SoS shall produce an updated version of the Operational Annex (for the purposes of this Clause 22.2, the "Revised Operational Annex") incorporating (as the case may be):

- (a) the relevant operational delegations which have been granted in accordance with this Clause 22.2;
- (b) revisions to reflect the withdrawal by the SoS of any Operational Delegations in accordance with this Agreement; or
- (c) any amendments (which have been agreed between the Parties) to the Operational Annex (as the case may be),

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.

- (B) The Parties shall use the Revised Operational Annex unless and until it is amended again in accordance with this Agreement.
- (C) When a Revised Operational Annex is issued by the SoS in accordance with Clause 22.2, it shall supersede any previous versions and shall constitute the definitive version of the Operational Annex.

23. **Management Information and Reporting**

23.1 **Purpose of Management Information**

- (A) The Parties agree that the purposes of Management Information are to:
 - (1) enable HS2 Ltd to:
 - (a) manage, develop and deliver the Core Programme in a manner that is consistent with the needs of a project of the Core Programme's size, scope and complexity; and
 - (b) demonstrate it is managing, developing and delivering the Core Programme in accordance with this Agreement; and
 - (2) enable the SoS to:
 - (a) review and measure the progress of the Core Programme, in particular in terms of progress against the Sponsor's Requirements, the Functional Response, Baseline Delivery Schedule, Baseline Cost Model and the Baseline Operational Cost Model and the Benefits Baseline for each Phase and the Financial Annex;
 - (b) identify issues which are affecting or may potentially affect the delivery of the Core Programme in accordance with, the Sponsor's Requirements, the Functional Response, Baseline Delivery Schedule, Baseline Cost Model and the Baseline Operational Cost Model and the Benefits Baseline for each Phase and the Financial Annex;
 - (c) review HS2 Ltd's performance of the Functions and the Operations;
 - (d) make informed decisions relating to the Core Programme;
 - (e) review the progress of the Wider Programme Benefits; and
 - (f) hold HS2 Ltd to account for managing, developing and delivering the Core Programme in accordance with its obligations under this Agreement.

23.2 **Scope of Management Information**

For the purposes of this Agreement, "Management Information" means all operating, financial, performance and other information, projections, models and/or data:

- (A) created and/or used by HS2 Ltd in the management, development and/or delivery of the Core Programme and the Core Programme Benefits and otherwise in respect of its performance of its obligations under this Agreement (including all such information or data in respect of the Delivery Contracts);
- (B) received by HS2 Ltd in relation to Wider Programme Benefits or Core Programme Benefits which have not been created and/or used as envisaged by Clause 23.2(A); and
- (C) any other information comprised in the Management Information System.

23.3 Management Information and Reporting Principles

- (A) HS2 Ltd shall discharge its obligations in relation to Management Information and reporting exercising Best Current Practice.
- (B) Without prejudice to HS2 Ltd's other obligations under this Agreement, HS2 Ltd shall:
 - (1) produce and submit Management Information in accordance with this Agreement;
 - (2) at all times, grant the Programme Representative access to the Management Information System and to all Management Information comprised therein;
 - (3) comply with best practice in terms of openness and transparency and in a manner that allows decisions of the SoS to be open to scrutiny and justification;
 - (4) use consistent presentation and format in preparing Management Information;
 - (5) have regard to avoiding duplication and unnecessary administration and bureaucracy; and
 - (6) comply with the Reporting Requirements agreed in accordance with Clause 23.7;
 - (7) ensure that all Management Information is aligned with the 2015 Spending Review reporting requirements; and
 - (8) work towards, in a timely fashion, implementing systems to enable all Management Information to be delivered electronically.

23.4 Management Information System

- (A) HS2 Ltd shall develop, establish and maintain an appropriate and satisfactory single Management Information System in respect of the Core Programme, which is also capable of tracking the Wider Programme Benefits. Once established, HS2 Ltd shall store all Management Information on the Management Information System.
- (B) HS2 Ltd shall provide to the SoS such information that it reasonably requires (relating to the Core Programme, the Wider Programme Benefits and/or this Agreement) which is held on the Management Information System.

23.5 Monthly Delivery Report

- (A) Within 15 Working Days of the end of each month, HS2 Ltd shall submit to the SoS a periodic report (a "Monthly Delivery Report") relating to the preceding month.
- (B) The Monthly Delivery Report shall report on the topics set out in paragraph 1 of Annex 5 (Scope of Delivery Reports) and comply with the principles set out in Clause 23.3.
- (C) The Parties agree that the purpose of the Monthly Delivery Report is for HS2 Ltd to report on any issues relating to the Core Programme and any other issues which may have arisen during the preceding month.

23.6 Annual Report

Within 4 weeks of the end of each Financial Year, the SoS may request from HS2 Ltd a report (an "Annual Report") relating to the preceding Financial Year which reports on the topics set out in paragraph 3 of Annex 5 (Scope of Delivery Reports) and complies with the principles set out in Clause 23.3. HS2 Ltd shall submit any requested Annual Report to the SoS within 8 weeks of request. HS2 Ltd shall also ensure that each Annual Report complies with the requirements of the Companies Act 2006 (so far as applicable to its circumstances), the UK Corporate Governance Code and the requirements of the HMT's Financial Reporting Manual and Accounting Officer.

23.7 Scope of Delivery Reports

Within 3 months from the Effective Date and on a regular basis thereafter, the Parties shall consult on and further define in detail the topics set out in Annex 5 (Scope of Delivery Reports) and the contents and the level of detail to be included in the Monthly Delivery Reports and Annual Reports. The Parties shall agree such details in writing (once agreed in writing between the Parties, the "Reporting Requirements").

23.8 Records

HS2 Ltd shall:

- (A) at all times maintain complete and accurate records of all data, records, materials and documents in any media and format within the possession or control of HS2 Ltd from time to time which relate to the Core Programme, the Wider Programme or otherwise to the performance of HS2 Ltd's obligations under this Agreement, including tax payments, administrative overheads, design, construction and engineering information (including drawings), asset registers, property records and other matters relevant to HS2 Ltd's reporting requirements;
- (B) with respect to the maintenance of records referred to in Clause 23.8(A), comply with best accountancy practice and Applicable Laws from time to time;
- (C) make available the books of account evidencing HS2 Ltd's maintenance of such records for inspection by the SoS and his/her representatives (including the Programme Representative) upon reasonable notice;

- (D) provide such facilities as the SoS reasonably requires for his/her representatives (including the Programme Representative) to visit any place where the records are held and examine and copy the records maintained under this Clause 23.8; and
- (E) HS2 Ltd shall maintain the records maintained under this Clause 23.8 until the date which is the later of: (1) 20 years from the creation of such records; and (2) if the records relate to an infrastructure asset, the projected end of life of the relevant asset. Following the expiry of such period, HS2 Ltd shall not destroy or otherwise dispose of such records unless and until:
 - (1) it has given the SoS not less than 60 days' notice of its intention to destroy or dispose of such records; and
 - (2) the SoS has had a reasonable opportunity to recover such records and has confirmed to HS2 Ltd in writing that he/she does not require such records to be delivered to him.

24. **Performance Monitoring and Performance Reviews**

24.1 **Performance monitoring by HS2 Ltd**

Without prejudice to the provisions of Part 6 (Budget Envelope, Target Prices and Anticipated Final Cost) or Clause 25 or limiting any of the SoS's rights or remedies or any of HS2 Ltd's obligations under this Agreement, HS2 Ltd shall implement and use appropriate measurement, monitoring and management tools and procedures to enable it to:

- (A) monitor fully and correctly its performance of its obligations under this Agreement;
- (B) maintain accurate, detailed and up-to-date records of its performance of its obligations under this Agreement; and
- (C) report (as part of a Monthly Delivery Report) all instances of any breach or potential breach of this Agreement.

24.2 **Performance monitoring or performance review by the SoS**

Without prejudice to Clause 24.1:

- (A) the SoS may elect to carry out performance monitoring or a performance review at any time (whether or not any Performance Default has occurred) in order to assess whether HS2 Ltd's obligations are being performed in accordance with this Agreement. The costs of such performance monitoring or performance review shall be borne by the SoS save in circumstances where the reason for such performance monitoring or performance review is the occurrence of a Performance Default in which case it shall be a cost to HS2 Ltd; and
- (B) HS2 Ltd shall assist the SoS in his/her performance monitoring or performance review and shall ensure that the SoS has unrestricted access to the premises of HS2 Ltd or the sites where any of HS2 Ltd's obligations under

this Agreement are being performed for the purposes of such monitoring or review.

- (C) HS2 Ltd shall co-operate with the SoS when responding to recommendations arising from any performance review and it shall not unreasonably refuse to comply with any SoS request arising from that performance review.

25. **Performance Remedies**

25.1 **Notification of breaches**

- (A) HS2 Ltd shall promptly notify the SoS of any breach or potential breach of this Agreement to the extent required by, and in accordance with, Clause 7.2(C).
- (B) The SoS shall promptly notify HS2 Ltd of any breach, or any potential material breach which is reasonably likely to occur, by him/her of this Agreement, if he/she becomes aware of the same.
- (C) The SoS may at any time notify HS2 Ltd of the occurrence of any Performance Default.

25.2 **Performance Default Remedies**

Following the occurrence of a Performance Default, the SoS shall consider its impact and, without prejudice to any other express rights or remedies of the SoS pursuant to this Agreement, the Core Programme Documents or otherwise, taking into account the nature and seriousness of the Performance Default, may choose to exercise any or all of the following remedies:

- (A) to require HS2 Ltd to promptly develop and (following the SoS's approval) comply with a remedial action plan which sets out, in reasonable detail, proposals to address and remedy the relevant Performance Default and/or take such other actions as the SoS may determine to rectify the Performance Default;
- (B) to require and/or implement an amendment to the Sponsor's Requirements, the Functional Response, the Financial Annex and/or any other document referred to in this Agreement;
- (C) to increase the level of the SoS's monitoring of HS2 Ltd of any or all of its obligations under this Agreement; and/or
- (D) to withdraw certain Operational Delegations which have been granted to HS2 Ltd.

25.3 **Protection from action of Third Party Nominated Undertakers**

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 6, 8.1, 8.2 and 8.3, 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 8.1, 8.2 and 8.3) in consequence of any action or inaction by any Third Party Nominated Undertaker that HS2 Ltd had no reasonable ability to control.

26. **Risk and liability**

26.1 HS2 Ltd shall be responsible for bearing and managing all risks in connection with the Core Programme save for the SoS Retained Risk Events ("HS2 Ltd's Core Programme Risks").

26.2 Save where expressly stated otherwise in this Agreement, HS2 Ltd shall be responsible and liable for discharging (or procuring the discharge of) (as applicable) by the responsible party any and all actions, claims, demands, liabilities, losses (including loss of revenue), damages, costs, compensation payments, charges and expenses (including legal expenses) brought against either HS2 Ltd or the SoS by any third party in connection with the Core Programme and/or HS2 Ltd's performance of its obligations under this Agreement including in connection with the acquisition, management and/or disposal of Land pursuant to this Agreement and/or arising out of the management, development and delivery of the Core Programme, save where such actions, claims, demands, liabilities, losses, damages, costs, compensation payments, charges and/or expenses have arisen:

- (A) directly from an SoS Retained Risk Event; and/or
- (B) indirectly from an SoS Retained Risk Event, if and to the extent that HS2 Ltd can demonstrate to the reasonable satisfaction of the SoS that it cannot, or has not been able to, flow down such actions, claims, demands, liabilities, losses, damages, costs, compensation payments, charges and/or expenses to the Delivery Contractors or to other tiers of sub-contractors on commercially reasonable terms,

("HS2 Ltd's Liabilities").

26.3 HS2 Ltd will not enter into any material acquisitions, disposals or other significant transactions or incur material external indebtedness from any alternative source of finance, outside the normal course of business and without prejudice to the Operational Delegations.

27. **SoS Retained Risk Events**

- 27.1 If any SoS Retained Risk Event occurs, then without prejudice to HS2 Ltd's duty to comply with its obligations under this Agreement, HS2 Ltd shall promptly notify the SoS of the SoS Retained Risk Event (a "SoS Retained Risk Event Notice"), giving full details of the nature of the event and its potential consequences and impact on the Core Programme (including delay and/or costs) and/or HS2 Ltd's compliance with its obligations under this Agreement.
- 27.2 Following provision of a SoS Retained Risk Event Notice, HS2 Ltd shall submit within a timescale reasonably appropriate to the nature of the SoS Retained Risk Event in question (subject to a maximum of 20 Working Days) to the SoS for approval a SoS Retained Risk Event Remedial Action Plan for the SoS Retained Risk Event.
- 27.3 The "SoS Retained Risk Event Remedial Action Plan":
- (A) will set out in reasonable detail a proposal, including any proposal for a Change in accordance with Annex 7, appropriate and viable to address the impact of the SoS Retained Risk Event and shall specify details for implementing such proposals and HS2 Ltd's forecast of the impact of such proposals on HS2 Ltd's compliance with its obligations under this Agreement and/or the costs and timing of the Core Programme; and
 - (B) may include details of any relief which HS2 Ltd considers the SoS should grant, which may include:
 - (1) in the case of delay, the Target Final Delivery Date for a Phase being postponed for a reasonable period, taking into account the likely effect of the delay directly caused by the SoS Retained Risk Event;
 - (2) in the case of unavoidable additional costs being incurred by HS2 Ltd, the SoS compensating HS2 Ltd for the actual costs HS2 Ltd has reasonably and properly incurred as a direct result of the SoS Retained Risk Event; and/or
 - (3) the SoS giving HS2 Ltd relief from any Performance Default or a particular breach of this Agreement directly caused by the SoS Retained Risk Event.
- 27.4 Following receipt of a SoS Retained Risk Event Notice (whether before, during or after receipt of any SoS Retained Risk Event Remedial Action Plan required pursuant to Clause 27.2), the SoS shall notify HS2 Ltd of any action he/she proposes to take with respect to the SoS Retained Risk Event.
- 27.5 The SoS's response to the impact of the SoS Retained Risk Event shall be to:
- (A) agree to part or all of the proposals set out in the SoS Retained Risk Event Remedial Action Plan, in which case HS2 Ltd (and, to the extent specified in the SoS Retained Risk Event Remedial Action Plan, the SoS) shall implement the SoS Retained Risk Event Remedial Action Plan in accordance with its terms including making such amendments to this Agreement as the SoS may agree;
 - (B) without prejudice to Clause 32 and Annex 7 (Change Procedure), request that HS2 Ltd revise the SoS Retained Risk Event Remedial Action Plan to take into account any alternative proposals suggested by the SoS, in which case HS2 Ltd shall revise the SoS Retained Risk Event Remedial Action Plan and Clause 27.4 shall apply;

- (C) if relevant, respond to HS2 Ltd's Change proposal in accordance with paragraph 3 of Annex 7 (Change Procedure); or
- (D) propose an alternative Change pursuant to paragraph 1 of Annex 7 (Change Procedure), in which case Annex 7 (Change Procedure) shall apply;
- (E) grant such relief as the SoS considers appropriate in the circumstances, which may include such relief as is applied for by HS2 Ltd in the SoS Retained Risk Event Remedial Action Plan; and/or
- (F) take any other action as the SoS sees fit in the circumstances,

and any such response shall be without prejudice to the other rights that are available to the SoS under the terms of this Agreement, the Core Programme Documents and the Delivery Contracts, or otherwise.

27.6 Each Party shall use its reasonable endeavours to mitigate the impact of any SoS Retained Risk Event.

28. **Management and Conduct of Claims**

28.1 HS2 Ltd shall immediately inform the SoS if it becomes aware that:

- (A) the amount claimed under any litigation, arbitration or administrative proceedings or disputes relating to land which are current, threatened or pending against it or the SoS, when aggregated with the disputed portions of any other outstanding claims, disputes or proceedings between HS2 Ltd and the same counterparty has a material effect on HS2 Ltd's ability to carry out the Permitted Purposes in respect of any Phase without exceeding the Target Price or, as the case may be, Budget Envelope for that Phase; or
- (B) such proceedings would be likely to:
 - (1) prejudice, or set a precedent affecting, the SoS's ongoing relationship with Network Rail or any other third party;
 - (2) be politically sensitive or raise reputational concerns for the SoS; or
 - (3) relate to a public law or a judicial review issue or concern for the SoS.

28.2 HS2 Ltd shall use all reasonable endeavours to ensure that any claim, dispute or proceeding relating to the Core Programme (or otherwise in connection with this Agreement) or any Dispute does not bring the name of the SoS into disrepute.

28.3 Unless otherwise agreed by the SoS and subject to Clauses 28.4, 28.5 and 28.6, HS2 Ltd shall (on a basis consistent with the best interests of the Core Programme and the reputation of the SoS and HS2 Ltd) manage and conduct any claim brought against either HS2 Ltd or the SoS (save to the extent that the SoS notifies HS2 Ltd that he/she will manage and conduct a claim made against him or it in accordance with Clause 28.4) by any third party in connection with the Core Programme and/or HS2 Ltd's performance of its obligations under this Agreement.

28.4 Notwithstanding any other provisions of this Agreement, the SoS may notify HS2 Ltd at any time that he/she will manage and conduct a claim relating to the Core

Programme which would otherwise be managed and conducted by HS2 Ltd in accordance with Clause 28.3. In such cases, HS2 Ltd shall provide such support and assistance as the SoS shall reasonably require in connection with such claims.

28.5 HS2 Ltd shall not, without the prior written consent of the SoS, settle or compromise any litigation, arbitration or administrative proceedings which are current, threatened or pending against it or the SoS if:

(A) the amount claimed under such proceedings, when aggregated with the disputed portions of any other outstanding claims, disputes or proceedings between HS2 Ltd and the same counterparty has a material effect on HS2 Ltd's ability to carry out the Permitted Purposes in respect of any Phase without exceeding the Target Price or, as the case may be, Budget Envelope for that Phase; or

(B) such proceedings would be likely to:

(1) prejudice, or set a precedent affecting, the SoS's ongoing relationship with Network Rail or any other third party; or

(2) be politically sensitive or raise reputational concerns for the SoS; or

(C) such proceedings relate to a public law or a judicial review issue or concern for the SoS.

28.6 HS2 Ltd shall provide such support and assistance as the SoS shall reasonably require in connection with any claim, dispute or proceedings (including any settlement of claims and/or proceedings in the Lands Tribunal or the Courts) made by any third party in respect of the following (which shall be managed and conducted by the SoS unless the SoS notifies HS2 Ltd otherwise):

(A) forcible entry and eviction in connection with Land acquired for the Core Programme;

(B) determining the appropriate level of compensation for Land acquired for the Core Programme; and/or

(C) any other claim in respect of any Land acquired, managed and/or disposed pursuant to Clause 16 or any Land which is otherwise impacted by the Core Programme.

29. **Dispute Resolution Procedure**

29.1 **Referral of Disputes**

(A) All Disputes shall be resolved in accordance with the Dispute Resolution Procedure set out in this Clause 29.

(B) The Parties shall use their respective best efforts to identify any matter which may become a Dispute as early as practicable and to incorporate appropriate dispute avoidance systems as part of their relationship at a working level.

(C) Notwithstanding Clause 29.1(B), either Party may refer any Dispute to the Dispute Resolution Procedure by written notice setting out the nature of the

Dispute to the other Party. The date of receipt of such written notice by the non-referring Party shall be the "Referral Date" for the purposes of this Clause 29.

29.2 First level: Senior representatives

As soon as practicable, but in any event within five Working Days of the Referral Date, the SoS and HS2 Ltd shall each nominate an appropriate senior representative (the "First Level Representatives") who shall meet promptly following their nomination to seek to resolve such Dispute.

29.3 Second level: Permanent Secretary of the Department for Transport and the Chairman of HS2 Ltd

If the First Level Representatives do not resolve the Dispute within 20 Working Days of the Referral Date (or such longer period as the Parties may agree), the Dispute shall be referred for discussion and resolution between the Permanent Secretary of the Department for Transport and the Chairman of HS2 Ltd (the "Second Level Representatives").

29.4 Third level: Secretary of State

If the Dispute has not been resolved through discussion of the Second Level Representatives, within 20 Working Days (or such longer period as the Parties may agree) of such Dispute being referred to such Second Level Representatives then either Second Level Representative may refer such Dispute for determination by the Secretary of State.

29.5 Status of Dispute pending resolution

Unless the Parties agree otherwise, pending the resolution of any Dispute in accordance with this Dispute Resolution Procedure, the Parties shall continue to comply with their respective obligations under this Agreement.

30. Future ownership and management options

30.1 HS2 Ltd shall, in its management, development and delivery of the Core Programme, at all times act in such a manner that would facilitate, and not hinder, obstruct or frustrate any future decision of the SoS to transfer all or part of the membership of HS2 Ltd or procure the sale of the whole or part of the HS2 Ltd business or outsourcing or granting of a concession of the whole or part of the Railway or the Operations to a third party, including by:

(A) managing the HS2 Ltd business as a business which is capable of being sold or outsourced at a future point in time, including by:

(1) (unless otherwise agreed by the SoS) not entering into any Delivery Contract which enables the counterparty to terminate such contract in the event of a change of control of HS2 Ltd;

(2) not entering into any Delivery Contract which prevents HS2 Ltd from assigning or novating its rights or obligations under that contract;

- (3) (without prejudice to Clause 23.8) maintaining at all times appropriate records of the HS2 Ltd business to facilitate any such transfer of ownership or outsourcing;
 - (4) maintaining at all times all warranties, manufacturers' guarantees and title ownership documents;
 - (5) procuring that each Delivery Contract and Delivery Sub-Contract includes the equivalent obligations set out in subparagraphs (1) to (4) above; and
 - (6) using reasonable endeavours to procure that direct agreements are signed by the counterparties to Delivery Contracts, where the SoS has notified HS2 Ltd that his/her intention is to transfer the relevant asset to the WCP Franchisee;
- (B) acting as a prudent and professional business at all times; and
- (C) having in place at all times appropriate business functions (including administrative support, finance, risk management, information technology, marketing and human resources) so as to be a self-standing business capable of independent operation.
- 30.2 Following HS2 Ltd's receipt of any notice informing of any such decision by the SoS, HS2 Ltd shall take all the steps necessary and shall provide the SoS and the relevant third party with all the assistance that may be required to ensure a rapid and effective transfer of ownership or handover of HS2 Ltd's business (or part thereof) (as the case may be).

PART 6: BUDGET ENVELOPE, TARGET PRICES AND ANTICIPATED FINAL COST

31. Budget Envelopes and Target Prices

31.1 Budget Envelopes

- (A) The initial version of the Phase One Budget Envelope is set out in the Budget Envelopes and Target Prices Document. It shall be reassessed and (if necessary) revised only in accordance with this clause 31.
- (B) On or prior to finalisation of the Outline Business Case for Phase 2a, the Parties shall as soon as practicable thereafter agree the Phase 2a Budget Envelope, which shall constitute a budget for HS2 Ltd's costs to carry out the Permitted Purposes in respect of Phase 2a, subject to development to Target Price stage in accordance with this Clause 31.
- (C) On or prior to finalisation of the Outline Business Case for Phase 2b, the Parties shall as soon as practicable thereafter agree the Phase 2b Budget Envelope, which shall constitute a budget for HS2 Ltd's costs to carry out the Permitted Purposes in respect of Phase 2b, subject to development to Target Price stage in accordance with this Clause 31.
- (D) If any Change (including clarifying or changing the scope of a Phase) is proposed prior to finalising the Full Business Case for a Phase:
 - (1) the Parties acknowledge that the Budget Envelope for the relevant Phase shall not be increased except in exceptional circumstances and unless agreed by the SoS; and
 - (2) the Parties shall collaboratively examine all options available for minimising the cost impact of the proposed Change upon the relevant Budget Envelope, including assessing whole life costs, capital costs, schedule impacts and benefits.

31.2 Transition from Budget Envelopes to Target Prices

- (A) Between finalisation of, for each Phase, the Outline Business Case and the Full Business Case, the Parties shall work together collaboratively to enable HS2 Ltd to deliver the Permitted Purposes for the relevant Phase within a Target Price that does not exceed the Budget Envelope for that Phase.
- (B) Following finalisation of the Full Business Case for a Phase, the relevant Budget Envelope shall, subject to adjustment pursuant to Clause 31.3, be fixed and shall become a "**Target Price**" for that Phase.
- (C) Subject to Clause 31.3, the Parties acknowledge that it is their expectation that the Target Price for a Phase shall not exceed the Budget Envelope for that Phase.
- (D) The Parties acknowledge that it is HS2 Ltd's intention to deliver the Permitted Purposes for a Phase for an amount that is less than the Target Price for that Phase.

31.3 Amending Target Prices

The Target Price for a Phase may only be adjusted in accordance with the Change procedure, the procedure set out in the Budget Envelopes and Target Prices Document, or as otherwise agreed between the Parties.

31.4 HS2 Ltd's obligation

HS2 Ltd shall use its best endeavours to ensure that the costs incurred by it in carrying out the Permitted Purposes in respect of each Phase do not exceed the Target Price for that Phase.

31.5 Increase in Anticipated Final Cost

- (A) HS2 Ltd shall ensure that the Anticipated Final Cost for Phase One does not exceed the total funding envelope for that Phase, as set by HM Treasury in the 2015 Spending Review (which amounts to £27.18 billion in 2015 prices).
- (B) HS2 Ltd shall ensure that, once the Parties have agreed the Budget Envelope for each of Phase 2a and Phase 2b respectively pursuant to Clause 31.1(B) and 31.1(C), the Anticipated Final Cost for each of Phase 2a and Phase 2b will not exceed the total funding envelope for the relevant Phase (which amounts to £3.72 billion for Phase 2a and £24.83 billion for Phase 2b, all in 2015 prices).

31.6 Anticipated Final Cost

HS2 Ltd shall, in each Monthly Delivery Report issued pursuant to Clause 23.5, notify the SoS of the Anticipated Final Costs (together with supporting information) for each Phase.

31.7 Budget Envelopes and Target Prices Document

- (A) The SoS shall be responsible at all times for maintaining an up-to-date version of the Budget Envelopes and Target Prices Document. Where any Budget Envelope or Target Price is agreed and/or revised in accordance with this Clause 31, the SoS shall produce a revised version of the Budget Envelopes and Target Prices Document (for the purposes of this Clause 31, the "Revised Budget Envelopes and Target Prices Document") incorporating the details of such amendments 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.
- (B) The Parties shall use the Revised Budget Envelopes and Target Prices Document unless and until it is amended again in accordance with this Agreement.
- (C) When a Revised Budget Envelopes and Target Prices Document is issued by the SoS in accordance with Clause 31.7(A), it shall supersede any previous versions and shall constitute the definitive version of the Budget Envelopes and Target Prices Document.

31.8 Resale value of Land and property portfolio

HS2 Ltd shall use its reasonable endeavours to maximise the proceeds of surplus Land relating to a Phase disposed of by it in accordance with Clause 16.9, including making strategic acquisitions when appropriate and consistent with its obligations in law.

PART 7: CHANGE

32. Change and Affirmation

32.1 Change

The provisions of Annex 7 (Change Procedure) shall apply in respect of any Change.

32.2 Affirmation

- (A) The purpose of the Affirmation Process shall be to give each of the SoS and HS2 Ltd the opportunity to seek clarification of any aspect of the Core Programme, the Wider Programme or this Agreement that is subjective, ambiguous, potentially conflicting or capable of different interpretations.
- (B) The SoS and HS2 Ltd shall jointly develop and agree a protocol for the Affirmation Process which shall achieve the purpose set out in Clause 32.2(A) above. The protocol shall set out:
 - (1) the programme for the SoS or HS2 Ltd to request clarification of elements of the Core Programme and Wider Programme requirements and/or this Agreement;
 - (2) the form in which the SoS or HS2 Ltd shall make its request (specifying each element and stage of the Affirmation Process);
 - (3) the process (including time periods) for the SoS or HS2 Ltd to respond with respect to a given request for clarification from the other Party; and
 - (4) the form and process for the SoS or HS2 Ltd to provide reasons for its responses to the other Party's request where appropriate.
- (C) If the SoS or HS2 Ltd requires clarification of any requirement of the Core Programme, the Wider Programme and/or this Agreement, then the relevant Party shall ask the other Party to affirm its interpretation of such requirement. Irrespective of whether HS2 Ltd requests clarification, the SoS may clarify his/her requirements at any time. In each case the SoS and HS2 Ltd shall work together to achieve a clear and common understanding of the Core Programme and Wider Programme requirements, and/or the requirements of this Agreement, supported by such relevant information as may be necessary.
- (D) Without prejudice to the SoS's ability to grant derogations from the Core Programme and Wider Programme requirements, and the requirements of this Agreement, the Affirmation Process shall not:
 - (1) relieve either Party of its obligations pursuant to this Agreement;
 - (2) constitute conclusive evidence that any deliverable shall receive the acceptance of the SoS or any other person whose acceptance is required by this Agreement; or
 - (3) relieve either Party or any other person of its liabilities,

save that, once an element of the Core Programme, Wider Programme or this Agreement has been Affirmed under this Clause 32.2 the Core Programme, Wider Programme or this Agreement (as the case may be) shall be interpreted consistently with that Affirmation for the purposes of this Agreement.

- (E) If HS2 Ltd demonstrates to the SoS's satisfaction that it has legitimately not allowed for the performance, time and/or cost consequences of the requirement (as clarified under Clause 32.2(C)), with reference to the relevant elements of the Baseline Cost Model, Baseline Operational Cost Model and Baseline Delivery Schedule, then the SoS shall require a Change in accordance with Annex 7 (Instruction and Change Procedure) to implement the requirement, in which case, on implementation of the Change, the requirement, as implemented by the Change, shall be treated as affirmed for the purposes of this Agreement. In any other circumstances, the requirements shall be treated as affirmed without any Change.
- (F) The Affirmation Process shall not prejudice the right of the SoS at any time to instruct an SoS Change Notice for any reason.

PART 8: CONFIDENTIALITY, FOIA, ANTI-BRIBERY & DATA PROTECTION

33. Confidentiality

33.1 Except to the extent set out in this Clause 33 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

- (A) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- (B) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the Disclosing Party's prior written consent;
- (C) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
- (D) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

33.2 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (A) the Recipient is required to disclose the Confidential Information in accordance with Applicable Laws, provided that Clause 34 shall apply to disclosures required under the FOI Legislation;
- (B) the need for such disclosure arises out of or in connection with:
 - (1) any legal challenge or potential legal challenge against the SoS arising out of or in connection with this Agreement;
 - (2) the examination and certification of the SoS's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness of the Core Programme and/or the application of public funding;
 - (3) any registration or recording of any Consents and property registration required; or
 - (4) the conduct of a Central Government Body review in respect of this Agreement; or
- (C) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office, or is otherwise to a Government Authority referred by Applicable Law.

- 33.3 If the Recipient is required by Applicable Laws to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Applicable Laws notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Applicable Laws and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 33.4 HS2 Ltd may disclose the Confidential Information of the SoS on a confidential basis only to:
- (A) any HS2 Ltd Related Parties who are directly involved in the management and/or delivery of the Core Programme and need to know the Confidential Information to enable performance of HS2 Ltd's obligations under this Agreement;
 - (B) its auditors; and
 - (C) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where HS2 Ltd discloses Confidential Information of the SoS pursuant to this Clause 33.4, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

- 33.5 The SoS may disclose the Confidential Information of HS2 Ltd:
- (A) on a confidential basis to any Central Government Body for any proper purpose of the SoS or of the relevant Central Government Body;
 - (B) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (C) to the extent that the SoS deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (D) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 33.5(A) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement; or
 - (E) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including in exercising its rights under Clauses 30 or 41,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the SoS under this Clause 33.

- 33.6 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOI Legislation, the content of this Agreement is not Confidential Information. The SoS shall determine whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOI Legislation. The SoS may consult with HS2 Ltd to inform his/her

decision regarding any redactions but shall have the final decision in his/her absolute discretion.

- 33.7 Notwithstanding any other provision of this Agreement, HS2 Ltd gives its consent for the SoS to publish to the general public this Agreement in its entirety (but with any information (which the SoS advises is exempt from disclosure in accordance with the provisions of the FOI Legislation) redacted), including any changes to this Agreement agreed from time to time. HS2 Ltd shall assist and co-operate with the SoS to enable the SoS to publish this Agreement.
- 33.8 The provisions of this Clause 33 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.
- 33.9 For the purposes of this Clause 33:
- (A) “Disclosing Party” means a Party which discloses or makes available directly or indirectly its Confidential Information;
 - (B) “information” means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-Rom, magnetic and digital form); and
 - (C) “Recipient” means the Party which receives or obtains directly or indirectly Confidential Information.

34. **Freedom of Information Act and Environmental Information Regulations**

34.1 **FOIA and Environmental Information Regulations**

Each Party agrees that:

- (A) each Party is subject to the FOI Legislation and agrees to assist and co-operate with the other Party to enable that Party to comply with its obligations under the FOI Legislation, including providing to the other Party such Information in its possession which is the subject of a valid and enforceable Information Request (where possible within a timeframe that enables compliance with the FOI Legislation);
- (B) where a Party receives an Information Request in relation to any Delivery Contract, it shall consult with the other Party where it is reasonably able to do so in the context of the time for compliance set out in FOI Legislation before disclosing Information pursuant to such Information Request and shall take due account of all reasonable representations made by the other Party;
- (C) either Party may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the other Party; and
- (D) the provision of Information in compliance with this Clause 34 will be deemed not to have been in breach of Clause 33.

34.2 FOIA Obligations

Subject to Clause 34.1(B), the recipient of an Information Request (the “FOIA Recipient”) shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation, save that, where any Information Request relates to Confidential Information disclosed by the other Party (the “FOIA Discloser”) in connection with this Agreement or the Delivery Contracts or otherwise in connection with the Core Programme, the FOIA Recipient shall, where practicable, in advance of making any disclosure under the FOI Legislation:

- (A) notify the other Party of the content of any Information Request received which will or may require the disclosure of any Confidential Information as soon as reasonably practicable following receipt;
- (B) use its reasonable endeavours to consult with the other Party in respect of such Information Request;
- (C) acting reasonably, take due account of all reasonable representations by the FOIA Discloser that such Confidential Information is exempt information; and
- (D) notify the other Party if and when it discloses any Confidential Information pursuant to an Information Request with a copy of the Information disclosed.

35. Bribery and Corruption

35.1 Without prejudice to Clause 8.1(K), HS2 Ltd shall be responsible for ensuring that it, its agents, each Delivery Contractor and by means of the flowdown of contractors’ obligations provided under Clause 35.4, each Delivery Sub-Contractor shall:

- (A) comply with all Applicable Laws relating to anti-bribery and anti-corruption (including but not limited to the Bribery Act 2010) applicable to the Core Programme (“Anti-Bribery Requirements”);
- (B) not engage in any activity, practice or conduct which would constitute an offence under any Anti-Bribery Requirements; and
- (C) have and maintain in place throughout the term of this Agreement its own ethics, anti-bribery, whistle-blowing and other policies and procedures which shall include standards no lower than those included in the “DfT(C) Policy Statement on Fraud, Bribery, Theft and Corruption” (as may be updated from time to time) (as applicable to HS2 Ltd), including adequate procedures under the Bribery Act 2010, designed to ensure compliance with the Anti-Bribery Requirements, and will enforce and implement them where appropriate.

35.2 HS2 Ltd shall immediately disclose in writing to the SoS if it becomes aware that:

- (A) it has, or any of its associated persons have, directly or indirectly, engaged in any activity, practice or conduct which constitutes or appears reasonably likely to constitute an offence under any Anti-Bribery Requirements;
- (B) it or any of its associated persons does not have or does not maintain ethics, anti-bribery, whistle-blowing and other policies and procedures providing at

least a reasonable level of assurance of ensuring compliance with the Anti-Bribery Requirements;

- (C) there is any civil recovery or other order, conviction, judgment or any ongoing investigation in connection with any Anti-Bribery Requirements outstanding against itself, its directors, officers, agents or employees or any other person performing functions for or on its behalf, and for which either itself or its associated persons could be liable under any Anti-Bribery Requirements;
- (D) it or any of its associated persons have been subject to, or have been notified in writing by a Government Authority that it will be subject to, any significant fine, sanction, debarment or penalty relating to a breach of any Anti-Bribery Requirements;
- (E) a foreign public official becomes an officer or employee of HS2 Ltd or any of its associated persons or acquires a direct membership or shareholding or indirect interest in HS2 Ltd or any of its associated persons; or
- (F) it is otherwise in breach of any provision of this Clause 35,

and, so far as the information is available to HS2 Ltd or it is permitted by Applicable Laws to do so, any such written disclosure shall:

- (1) make reference to the facts and circumstances applying from time to time;
- (2) provide sufficient details as to the facts and circumstances to enable the SoS to make an accurate assessment of the situation; and
- (3) describe such action(s) that HS2 Ltd has taken (or will take) in connection with such facts and circumstances.

35.3 HS2 Ltd undertakes that it will provide to the SoS any information and explanations as and when reasonably requested by the SoS relating to compliance with its obligations under this Clause 35.

35.4 HS2 Ltd shall ensure that each Delivery Contract obtains from the relevant Delivery Contractor obligations equivalent to those imposed on HS2 Ltd in this Clause 35 and includes a requirement that equivalent obligations are obtained from such Delivery Sub-Contractors in the next tier of contracts, and so on down each tier of contracts ("Anti-Bribery Terms"). HS2 Ltd shall be responsible for the compliance by the Delivery Contractors of the Anti-Bribery Terms and shall enforce the Anti-Bribery Terms obtained from its Delivery Contractors which (the Delivery Contractors) shall in turn be responsible for the enforcement of the Anti-Bribery Terms obtained from their respective Delivery Sub-Contractors in the next tier of contracts, and so on down successive tiers of contracts.

35.5 For the purposes of this Clause 35:

- (A) the meaning of "adequate procedures" shall be determined in accordance with section 7 of the Bribery Act 2010 (and any guidance issued under section 9 of that Act);
- (B) "associated person" shall have the meaning given to that term in section 8 of the Bribery Act 2010 and each reference to "associated person" shall be

deemed to also refer to each Delivery Contractor and each Delivery Sub-Contractor; and

- (C) “foreign public official” shall have the meaning given to that term in section 6(5) of the Bribery Act 2010.

36. **Data Protection**

36.1 With respect to the Parties’ rights and obligations under this Agreement, the Parties agree that where HS2 Ltd is the Data Controller for Personal Data:

- (A) HS2 Ltd will comply with the provisions of Data Protection Legislation, including by maintaining any valid and up-to-date registration or notification required;
- (B) HS2 Ltd will implement appropriate technical and organisational measures to protect any Personal Data against unlawful Processing, and against accidental loss, destruction, damage, alteration or unauthorised disclosure of or access to any Personal Data;
- (C) HS2 Ltd will notify the SoS as soon as reasonably practicable of receipt if it receives:
 - (1) any notice or communication from any supervisory or regulatory body which relates directly or indirectly to the Processing of Personal Data; or
 - (2) a complaint, allegation, claim or request relating to HS2 Ltd’s compliance with its obligations under the Data Protection Legislation;
- (D) where HS2 Ltd makes a notification to the SoS under Clause 36.1(B) HS2 Ltd will:
 - (1) provide the SoS with full details of the situation being notified;
 - (2) comply with any relevant timescales set out in the Data Protection Legislation;
 - (3) permit the SoS to take all steps as are reasonable in the circumstances, including but not limited to allowing:
 - (a) the SoS wholly to manage or assist in responding to the situation being notified; and
 - (b) the SoS wholly to manage any reputational risk arising from the situation being notified; and
 - (4) provide the SoS with any other information as requested by the SoS.

36.2 With respect to the Parties’ rights and obligations under this Agreement, the Parties agree that where a Party is the Data Controller and the other Party is the Data Processor of any Personal Data:

- (A) the only processing that the Data Processor is authorised to do is listed in the Processing, Personal Data and Data Subjects Annex and may not be determined by the Data Processor;

- (B) the Data Processor shall notify the Data Controller immediately if it considers that any of the Data Controller's instructions infringe the Data Protection Legislation;
- (C) the Data Processor shall provide all reasonable assistance to the Data Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Data Controller, include:
 - (1) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (2) an assessment of the necessity and proportionality of the processing operations in relation to the services;
 - (3) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (4) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;
- (D) the Data Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - (1) process that Personal Data only in accordance with the Processing, Personal Data and Data Subjects Annex, unless the Data Processor is required to do otherwise by Law. If it is so required the Data Processor shall promptly notify the Data Controller before processing the Personal Data unless prohibited by Law;
 - (2) ensure that it has in place Protective Measures, which have been reviewed and approved by the Data Controller as appropriate to protect against a Data Loss Event having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - (3) ensure that:
 - (a) the Data Processor personnel do not process Personal Data except in accordance with this Agreement and the Processing, Personal Data and Data Subjects Annex;
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Data Processor Personnel who have access to the Personal Data and ensure that they:

- (i) are aware of and comply with the Data Processor's duties under this Clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Data Processor or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Data Controller or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (4) not transfer Personal Data outside of the EU unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:
 - (a) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Data Controller;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Data Controller in meeting its obligations); and
 - (d) the Data Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data; and
- (5) at the written direction of the Data Controller, delete or return Personal Data (and any copies of it) to the Data Controller on termination of this Agreement unless the Data Processor is required by Law to retain the Personal Data;
- (E) subject to paragraph (F), the Data Processor shall notify the Data Controller immediately if it:
 - (1) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (2) receives a request to rectify, block or erase any Personal Data;
 - (3) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (4) receives any communication from the Information Commissioner or any other regulatory Data Controller in connection with Personal Data processed under this Agreement;

- (5) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (6) becomes aware of a Data Loss Event;
- (F) the Data Processor's obligation to notify under paragraph (E) shall include the provision of further information to the Data Controller in phases, as details become available;
- (G) taking into account the nature of the processing, the Data Processor shall provide the Data Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph (E) (and insofar as possible within the timescales reasonably required by the Data Controller) including by promptly providing:
 - (1) the Data Controller with full details and copies of the complaint, communication or request;
 - (2) such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (3) the Data Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (4) assistance as requested by the Data Controller following any Data Loss Event; and
 - (5) assistance as requested by the Data Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Data Controller with the Information Commissioner's Office;
- (H) the Data Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Data Processor employs fewer than 250 staff, unless:
 - (1) the Data Controller determines that the processing is not occasional;
 - (2) the Data Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (3) the Data Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects;
- (I) the Data Processor shall allow for audits of its Data Processing activity by the Data Controller or the Data Controller's designated auditor;
- (J) the Data Processor shall designate a data protection officer if required by the Data Protection Legislation;

- (K) before allowing any Sub-processor to process any Personal Data related to this Agreement, the Data Processor must:
 - (1) notify the Data Controller in writing of the intended Sub-processor and processing;
 - (2) obtain the written consent of the Data Controller;
 - (3) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 36 such that they apply to the Sub-processor; and
 - (4) provide the Data Controller with such information regarding the Sub-processor as the Data Controller may reasonably require;
- (L) the Data Processor shall remain fully liable for all acts or omissions of any Sub-processor;
- (M) the Data Controller may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement); and
- (N) the Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Data Controller may on not less than 30 Working Days' notice to the Data Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

PART 9: GENERAL CONDITIONS

37. Termination

37.1 If:

- (A) the SoS elects (in his/her absolute discretion) to terminate this Agreement for any reason including pursuant to the terms of this Agreement; or
- (B) the Parties mutually agree in writing to terminate this Agreement,

the SoS shall give notice to HS2 Ltd that this Agreement will terminate and the date on which such termination will take effect.

37.2 **Consequences of Termination**

Upon the issue of a notice of termination by the SoS in accordance with Clause 37.1 above and unless otherwise notified by the SoS to HS2 Ltd:

- (A) the Parties shall co-operate with each other and act reasonably in order to implement an orderly cessation to (and/or handover to a third party) the activities contemplated by this Agreement, the Delivery Contracts and any other activities relating to the Core Programme involving HS2 Ltd;
- (B) HS2 Ltd shall immediately commence to demobilise and wind down its activities so as to cease its activities and operations in a prompt, orderly and cost-efficient manner;
- (C) HS2 Ltd shall deliver to the SoS all information, materials, documents and records that it holds in relation to the Core Programme and shall comply with any directions given by the SoS in respect of Assets in accordance with Clause 17.5;
- (D) (with effect from the date of termination as specified in such notice) the SoS shall be released from all obligations to provide further funding to HS2 Ltd in accordance with Part 4 (Funding) of this Agreement; and
- (E) HS2 Ltd shall, within 40 Working Days, provide the SoS with a notice identifying:
 - (1) the total amount of its Breakage Costs; and
 - (2) the total amount of any cash or other resources that HS2 Ltd has available to meet such costs and liabilities,

provided that if HS2 Ltd is unable to quantify certain Breakage Costs:

- (a) HS2 Ltd shall include in such notice details of those unquantifiable Breakage Costs (for the purposes of this Clause 37, the "Outstanding Breakage Costs"), and shall specify a proposed time period (to commence from the date of such notice) by which HS2 Ltd considers it will be able to

provide a further notice in relation to the amount of the Outstanding Breakage Costs;

- (b) within 5 Working Days of the SoS's receipt of such notice, the Parties shall agree the time period (to commence from the date of such notice) by which HS2 Ltd will provide a further notice which includes the amounts referred to in Clause (1) (including the Outstanding Breakage Costs) and Clause (2), and HS2 Ltd shall provide such further notice within such agreed time period.

37.3 Subject to HS2 Ltd's compliance with Clause 37.2(E), if the amount referred to in Clause 37.2(E)(1) is greater than the amount referred to in Clause 37.2(E)(2), the SoS shall meet the difference in those amounts as and when they become due to enable HS2 Ltd to meet its Breakage Costs provided that in the event of termination due to a Performance Default as a result of, or in connection with, default by a Delivery Contractor under its Delivery Contract, the SoS obligation to meet the difference in this Clause 37.3 shall not apply.

38. **Notices**

38.1 Any notice to be given by one Party to another Party under, or in connection with, this Agreement shall be in writing and signed by or on behalf of the Party giving it. It shall be served by delivering it by hand, or sending it by pre-paid recorded delivery, special delivery or registered post, to the address set out in Clause 38.2 and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this Clause 38). Any notice so served by hand or post shall be deemed to have been duly given:

- (A) in the case of delivery by hand, when delivered; and
- (B) in the case of prepaid recorded delivery, special delivery or registered post, at 10 a.m. on the second Working Day following the date of posting,

provided that in each case where delivery by hand occurs after 6 p.m. on a Working Day or on a day which is not a Working Day, service shall be deemed to occur at 9 a.m. on the next following Working Day.

38.2 The addresses of the Parties for the purpose of Clause 38.1 are as follows:

SoS

Address: Great Minster House
33 Horseferry Road
London
SW1P 4DR

Attention: Director General, High Speed Rail Group

HS2 Ltd

Address: Two Snowhill
Snow Hill Queensway
Birmingham

Attention: Chief Executive

38.3 A Party may notify the other Party of a change to its name, relevant addressee, address for the purposes of this Clause 38, provided that, such notice shall only be effective on:

- (A) the date specified in the notice as the date on which the change is to take place; or
- (B) if no date is specified or the date specified is less than five Working Days after the date on which notice is given, the date following five Working Days after notice of any change has been given.

39. **Waiver**

39.1 No term or provision of this Agreement shall be considered as waived by any Party unless a waiver is given in writing by that Party.

39.2 No waiver under Clause 39.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

40. **No Partnership or Agency**

40.1 Nothing in this Agreement or any Delivery Contract (or any of the arrangements contemplated by any of them) is or shall be deemed to constitute a partnership or any other similar type of association between the Parties and nothing in this Agreement or any Delivery Contract (or any of the arrangements contemplated by any of them) shall make any Party the agent of the other Party for any purpose save as expressly contemplated in this Agreement.

40.2 Unless the Parties agree otherwise in writing, no Party shall:

- (A) enter into any contracts or commitments as agent for another Party; or
- (B) describe itself as such an agent or in any way hold itself out as being such an agent,

save as expressly contemplated in this Agreement.

41. **Assignment**

41.1 No Party shall, nor shall it purport to, assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under this Agreement nor grant, declare, create or dispose of any right or interest in it, without the prior written consent of the other Party.

42. **Entire Agreement**

42.1 This Agreement sets forth the entire contract and agreement between the Parties pertaining to the Core Programme and supersedes all enquiries, letters, proposals,

agreements, negotiations and commitments, whether written or oral, before the date of execution of this Agreement, pertaining to the Core Programme or this Agreement.

43. **Variation**

43.1 No amendment, modification or variation of, or waiver in respect of, this Agreement shall be valid unless it is in writing and signed by or on behalf of both Parties.

43.2 Unless expressly agreed, no variation shall constitute a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement which have already accrued up to the date of variation, and the rights and obligations of the Parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so varied.

43.3 No failure or delay by any Party in exercising any right, power or remedy provided by law under or pursuant to this Agreement shall impair such right, power or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right, power or remedy shall preclude any other or further exercise of it or the exercise of any other right, power or remedy.

44. **Invalidity**

44.1 If any provision of this Agreement is or becomes (whether or not pursuant to any judgment or otherwise) invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the validity, legality and enforceability under the law of that jurisdiction of any other provision shall not be affected or impaired in any way thereby.

45. **Severability**

45.1 If and to the extent that any provision of this Agreement is held to be, or becomes (whether or not pursuant to any judgment or otherwise), illegal, void or unenforceable in any respect under any law of any jurisdiction, under the law of such jurisdiction such provision shall be given no effect and shall be deemed not to be included in this Agreement but without invalidating any of the remaining provisions of this Agreement, and such provision's validity, legality and enforceability shall not be affected or impaired in any way under the law of any other jurisdiction. The Parties shall meet to negotiate in good faith to agree a valid, binding and enforceable substitute provision or provisions, (if necessary with reconsideration of other terms of this Agreement not so affected) so as to re-establish an appropriate balance of the commercial interests of the Parties.

46. **Further Assurance**

46.1 Both Parties agree to perform (or use all reasonable endeavours to procure the performance of) all further acts and things, and execute and deliver (or use all reasonable endeavours to procure the execution and delivery of) such further documents, as may be required by Applicable Law or as may be necessary or reasonably desirable to implement and/or give full effect to this Agreement and the transaction contemplated by it.

47. **Counterparts**

47.1 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

48. **Exclusion of Legislation**

48.1 A person who is not a Party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

48.2 This Agreement is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of paragraph 6 of the Construction Contracts (England and Wales) Exclusion Order 1998. The Parties agree that the operation of the Housing Grants, Construction and Regeneration Act 1996 upon any Delivery Contracts shall not affect the Parties' rights or obligations under this Agreement.

49. **Governing Law**

49.1 This Agreement and the relationship between the Parties shall be governed by, and interpreted in accordance with, English law.

THIS AGREEMENT has been executed by the Parties on 26th November 2018.

SIGNED)
By) Clive Maxwell
for and on behalf of)
THE SECRETARY OF STATE FOR TRANSPORT)

SIGNED)
By) Mark Thurston
for and on behalf of)
HIGH SPEED TWO (HS2) LIMITED)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ANNEX 2 : SPONSOR'S REQUIREMENTS

SR Theme	Requirement
1. Route and stations	<p>The Railway shall deliver Phase One and Phase 2a and Phase 2b of the Project, including the stations and routes referred to in the definitions of Phase One and Phase 2a and Phase 2b set out below.</p> <p>“<u>Phase One</u>” means the phase of the Project in respect of the Railway which will connect Euston in London and a junction with the West Coast Main Line at Handsacre in Staffordshire, with a spur from Water Orton in Warwickshire to Curzon Street in Birmingham, which will include high speed rail provision at the London Euston station and the delivery of new stations at Old Oak Common, Birmingham Interchange and Birmingham Curzon Street.</p> <p>“<u>Phase 2a</u>” means the phase of the Project in respect of the Railway which provides high speed rail provision between the termination of Phase One route near Fradley, a junction with the West Coast Main Line near Crewe and to a tunnel portal South of Crewe.</p> <p>“<u>Phase 2b</u>” means the phase of the Project in respect of the Railway which will connect Birmingham to Manchester, Leeds, and other locations via the existing East and West Coast and Midland Main Lines, which will including new stations at Manchester Airport, Manchester Piccadilly, East Midlands Hub and Leeds.</p>
2. Safety	<p>The Railway shall be designed, constructed and operated so that safety risks are as low as reasonably practicable.</p>
3. Passenger capacity	<p>The Railway shall be capable of carrying the high speed rail passenger flow consistent with 10tph (trains per hour) into and out of London Euston from the Target Delivery Date for Phase One and Phase 2a; and consistent with 18 tph into and out of Euston from the target delivery date for Phase 2b.</p> <p>As a minimum the Railway infrastructure (including civil engineering, stations, railway systems and power supply) shall be capable of carrying the high speed rail train service that is annexed to these Sponsors Requirements.</p>
4. Journey time	<p>As a minimum the Railway shall be capable of achieving the wheel start-to-wheel stop journey times required to deliver the HS2 train service specifications annexed to these Sponsors Requirements.</p> <p>The Railway shall also deliver minimised walking times from train-to-street and minimised journey times for interchange with other transport modes.</p>
5. Infrastructure capability	<p>As a minimum the Railway shall have the capability to deliver the High Speed train service specifications annexed to these Sponsors Requirements.</p> <p>For avoidance of doubt these means that the Railway shall have capability for 10 tph (trains per hour) into and out of London Euston from the Target Delivery Date for Phase One and 2a, and for 18 tph into and out of London Euston for Phase 2b.</p>
6. Reliability	<p>The Railway shall be capable of operating with high levels of train service performance, reliability and resilience including resilience of operations during degraded conditions.</p> <p>The Railway shall be, insofar as practical, resilient to any periods of poor performance on the wider network and can isolate the wider network from any periods of poor performance on the railway.</p>

SR Theme	Requirement
	<p>The Railway shall use proven technology to maintain reliability.</p> <p>Delays to passenger services on the Railway shall be less than 30 seconds per train (on the high speed network measured as a moving annual average).</p>
7. Passenger experience	<p>The Railway shall provide a good quality passenger experience, which meets the reasonable expectations of all groups of travellers for customer service, accessibility, comfort and passenger facilities.</p> <p>This includes but is not limited to facilities that :</p> <ul style="list-style-type: none"> • are simple to use and accessible to all passengers including people within reduced mobility; • provide reliable and helpful real-time passenger information in an appropriate range of formats; • provide for smart ticketing and convenient ticket retail; • enable passengers to reliably access communication networks in a way that meets their reasonable needs and expectations for entertainment, personal or business usage; • are attractive, comfortable and pleasant to use; • provide appropriate numbers of toilets on trains and at stations; and • provide appropriate luggage storage and catering facilities.
8. Revenue	<p>The Railway shall operate efficiently to earn revenue. Design should retain flexibility for developments in the commercial, customer and operational models.</p> <p>The Railway shall be capable of delivering, at a minimum, the revenues as set out in the Business Case</p>
9. Operations and maintenance	<p>The Railway (once in operation) shall meet Best Current Practice in all aspects of railway operations and maintenance, including:</p> <ul style="list-style-type: none"> • reliable, safe and highly effective operational systems and practices, including all railway, organisational and contractual interfaces; • assets that support efficient and effective operations and maintenance including the setting and delivery of reliability, availability, maintainability and safety (RAMS) targets; and • high workforce capability to deliver the operations and maintenance services.
10. Integration with the Existing Network	<p>The Railway shall be capable of operating passenger services that seamlessly operate on both the high speed network and Existing Network where required.</p> <p>HS2 Ltd are required to take account of the Existing Network Train Specification Service that underpins the most recently published business case, as set out in the latest PLANET framework model assumptions report.</p>
11. Benefits realisation	<p>The Railway shall be designed and delivered to optimise benefits realisation in both the Core and Wider programme through its construction and operation including:</p> <ul style="list-style-type: none"> • job creation – including apprenticeships and workforce skills development and

SR Theme	Requirement
	<p>innovation;</p> <ul style="list-style-type: none"> • promotion of inward investment; • accommodation of features proposed and funded by Local Authorities in order to prepare for and implement their HS2 Growth Strategies; • supporting the potential for future development, growth and regeneration around the places stations are built; and • providing capacity for fibre optic cabling (for third party non-rail use) along the line of use. <p>HS2 Ltd Shall as a minimum:</p> <ul style="list-style-type: none"> • provide input and support to the National College for High Speed Rail; • deliver an outreach programme to promote skills and career development associated with high speed rail, targeting both secondary and further education.
12. Architectural Design	<p>The Railway shall have architectural designs that are sensitive to the local environment.</p> <p>The Railway shall be designed to incorporate the recommendations of the HS2 Design Panel for the Project, where practical.</p>
13. Integration with other transport modes	<p>The Railway shall be easy to access, and integrated with local and regional transport in order to promote sustainable travel choices where practical.</p> <p>Including:</p> <p>a) The HS2 Station at Euston will provide direct interchange with:</p> <ul style="list-style-type: none"> • The Existing Railway • London Underground Limited existing station complex at Euston Station • London Underground Limited Metropolitan and Circle Lines at Euston Square Station • Transport for London bus services on Euston Road, Eversholt Street and Hampstead Road • Taxis • Passive provision for Crossrail 2 <p>b) The HS2 station at Old Oak Common will provide:</p> <ul style="list-style-type: none"> • Interchange with GWML and Crossrail services (enabling Crossrail trains to terminate), and • Must not preclude aspirations for local services (West, North London Lines and West Coast Main Line), as well as local authority aspirations for the regeneration of the area. <p>c) The HS2 station at Birmingham Interchange will provide:</p>

SR Theme	Requirement
	<ul style="list-style-type: none"> • Road access to the strategic road network • Car parking for up to 7000 cars • An automated people mover that connects the new station to the NEC, Birmingham International railway station and Birmingham Airport <p>d) The HS2 station at Birmingham Curzon Street will include facilities for interchange with public transport</p> <p>e) The Phase 2 stations at Manchester Piccadilly, Manchester Airport, Leeds and Toton will include facilities for interchange with public transport;</p> <p>f) All new stations and rolling stock will have appropriate provision of cycle facilities.</p>
14.Sustainability	The Railway shall embed the rail industry’s sustainable development principles in its design, construction and operation ³ .
15.Minimise Adverse impacts	<p>The Railway shall be designed and delivered to avoid, reduce and, if possible, remedy adverse impacts, as far as reasonably possible (including during construction), and deliver enhancements where these are economically viable, including the following areas:</p> <ol style="list-style-type: none"> 1) agriculture, forestry and soils 2) community 3) cultural heritage 4) disruption during construction and maintenance 5) ecology 6) landscape and visual assessment 7) sound, noise and vibration 8) waste and material resources 9) water resources and flood risk assessment 10) whole life greenhouse gas emissions, including energy use (EC4T and wider usage) and embedded carbon
16.Security	The Railway shall be designed and operated in accordance with Best Current Practice and other best practice in physical and cyber security management.
17.Compliance with standards	The Railway shall comply with all applicable UK and European railway standards and legislation including the EU Technical Specifications for Interoperability (“TSIs”) and Notified National Technical Rules. HS2 Ltd may seek a derogation or change to a TSI with the agreement of the SoS.
18.Commercial and operational	The Railway shall be designed and structured to maintain flexibility for future private sector finance or investment and alternative models for the ownership and operation of

3 <https://www.rssb.co.uk/library/improving-industry-performance/2016-05-rail-sustainable-development-principles.pdf>

SR Theme	Requirement
flexibility	infrastructure and rolling stock.
19. Cost	The Railway shall be designed and procured to meet the requirements of Clause 8.4 of the Development Agreement.
20. Time	<p>The Railway shall be capable of full passenger operations at the earliest date possible.</p> <p>At a minimum the Railway shall be commissioned and be capable of operating;</p> <ul style="list-style-type: none"> a) the full Phase One specified service by 31 December 2026 (the "<u>Target Phase One Final Delivery Date</u>"); and b) the full Phase 2a specified service by 31 December 2027 (the "<u>Target Phase 2a Final Delivery Date</u>"). c) the full Phase 2b specified service before by 31 December 2033 (the "<u>Target Phase 2b Final Delivery Date</u>"). <p>Consideration should be given to opening train services for each Phase of the Railway in incremental stages to achieve the best outcome operationally and for customers.</p>

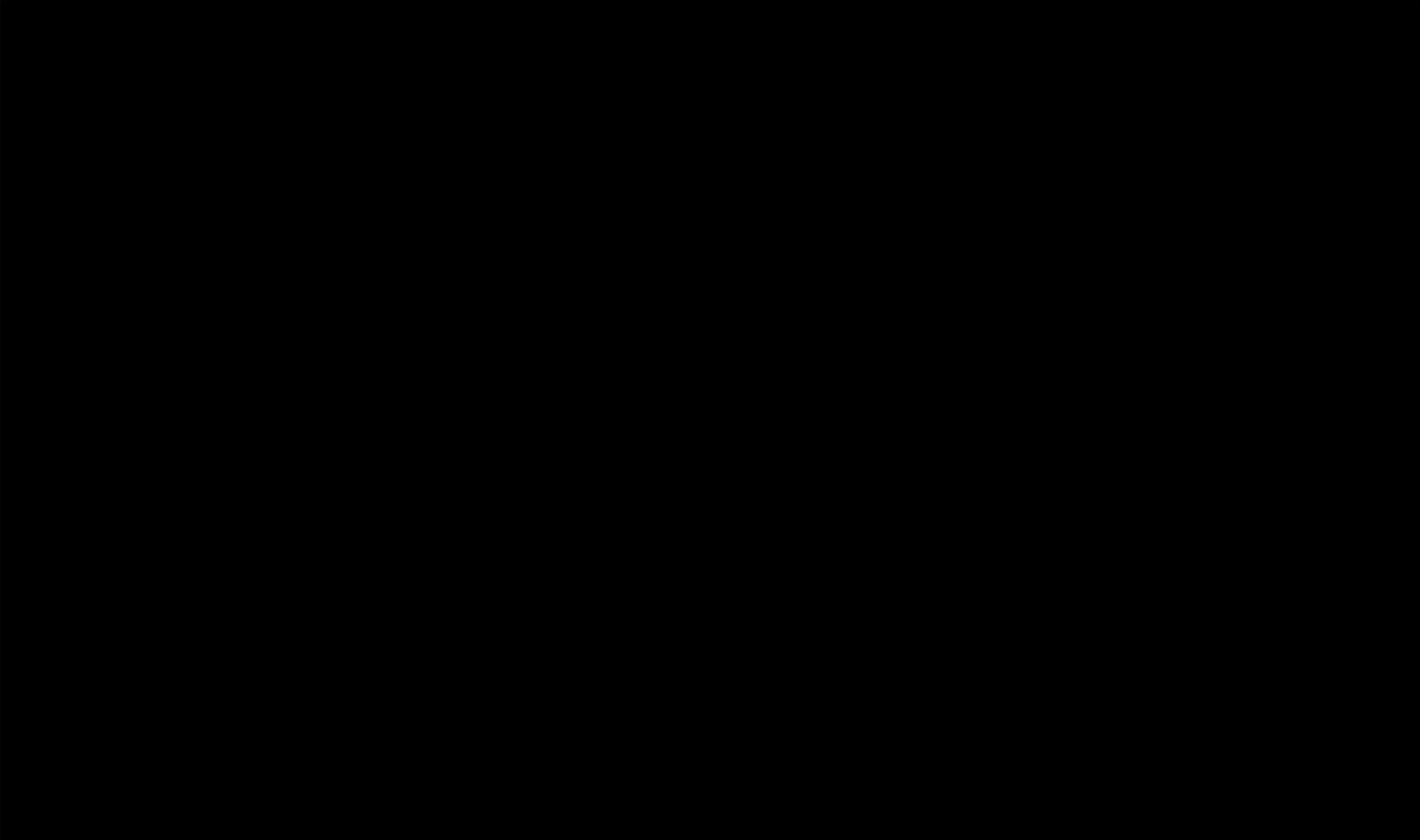


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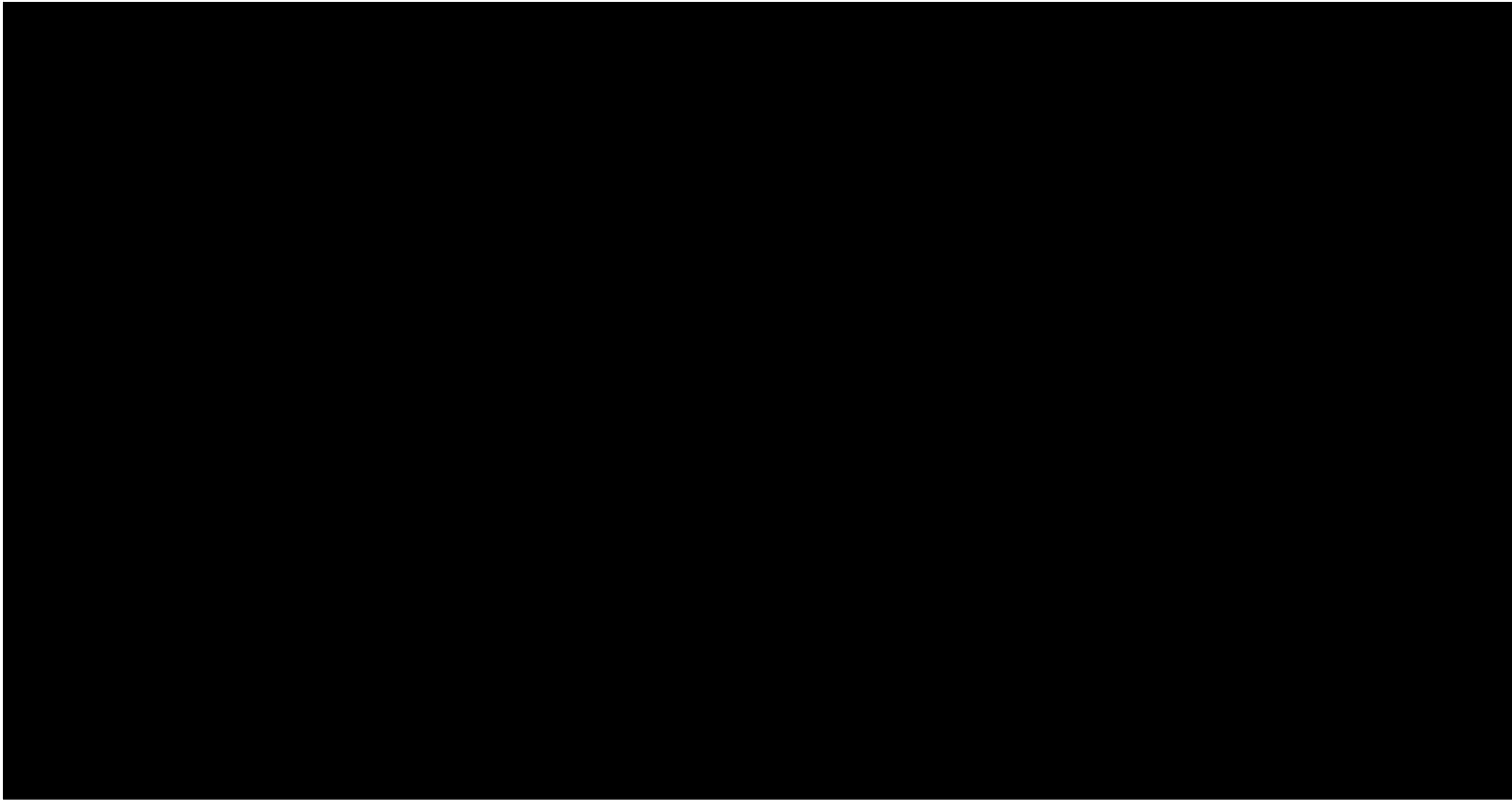
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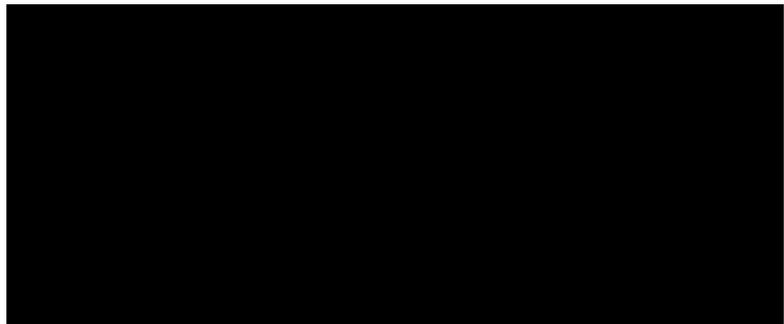
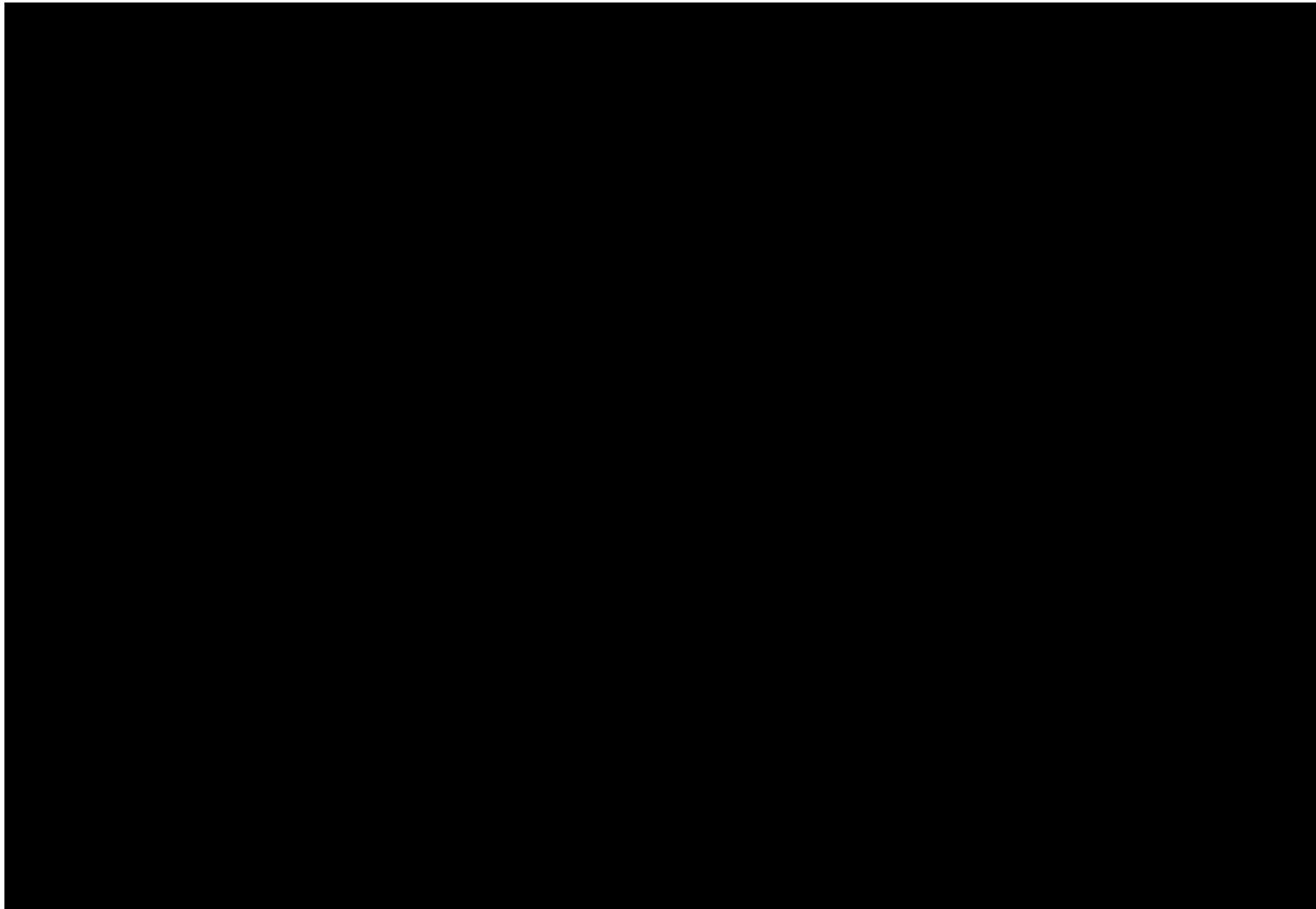
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ANNEX 3 : FUNCTIONAL RESPONSE ⁴

⁴ HS2 Ltd is in the process of updating the Functional Response. The version existing in June 2016 remains in place until a new Functional Response is agreed.

ANNEX 4 : BASELINES

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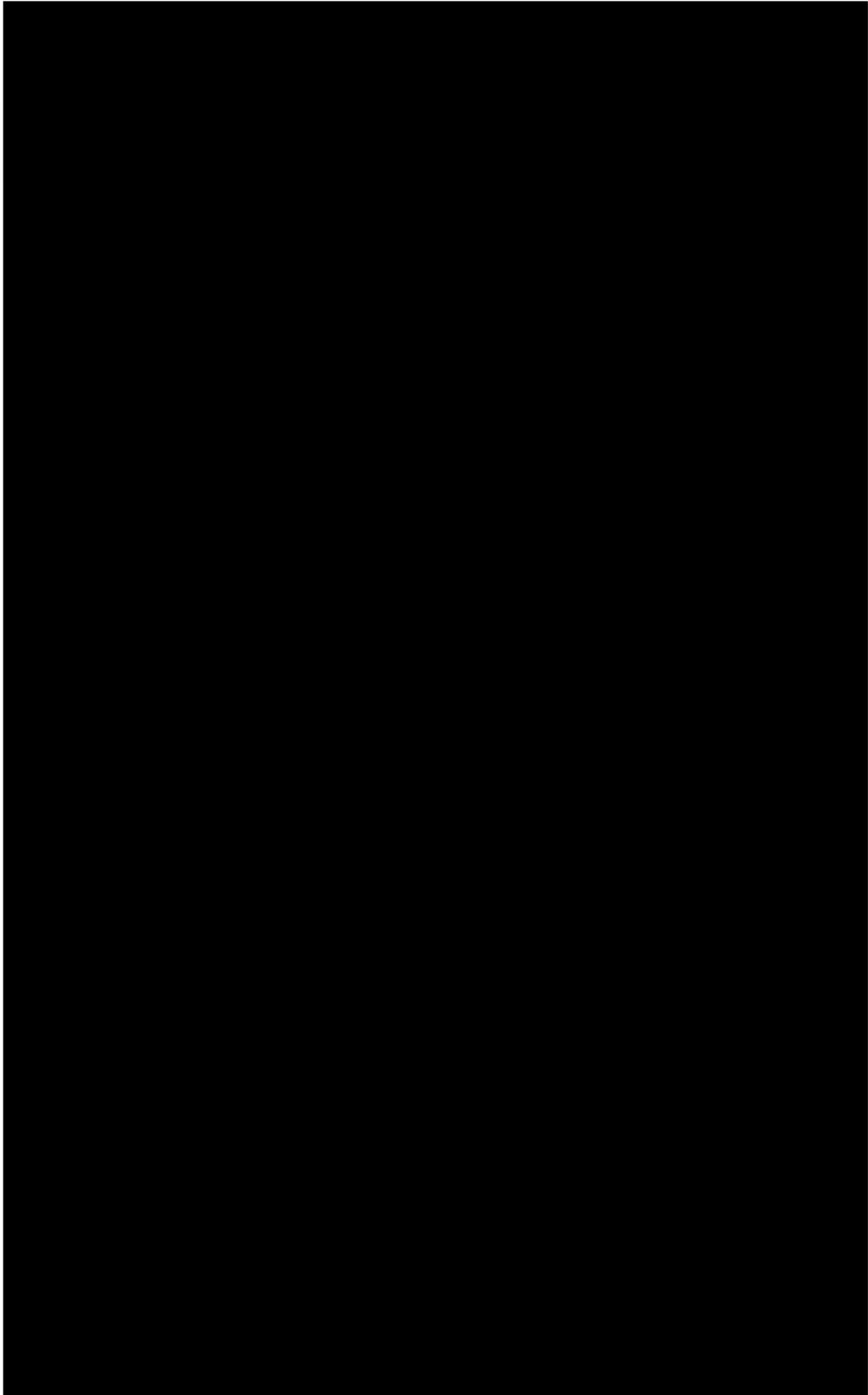
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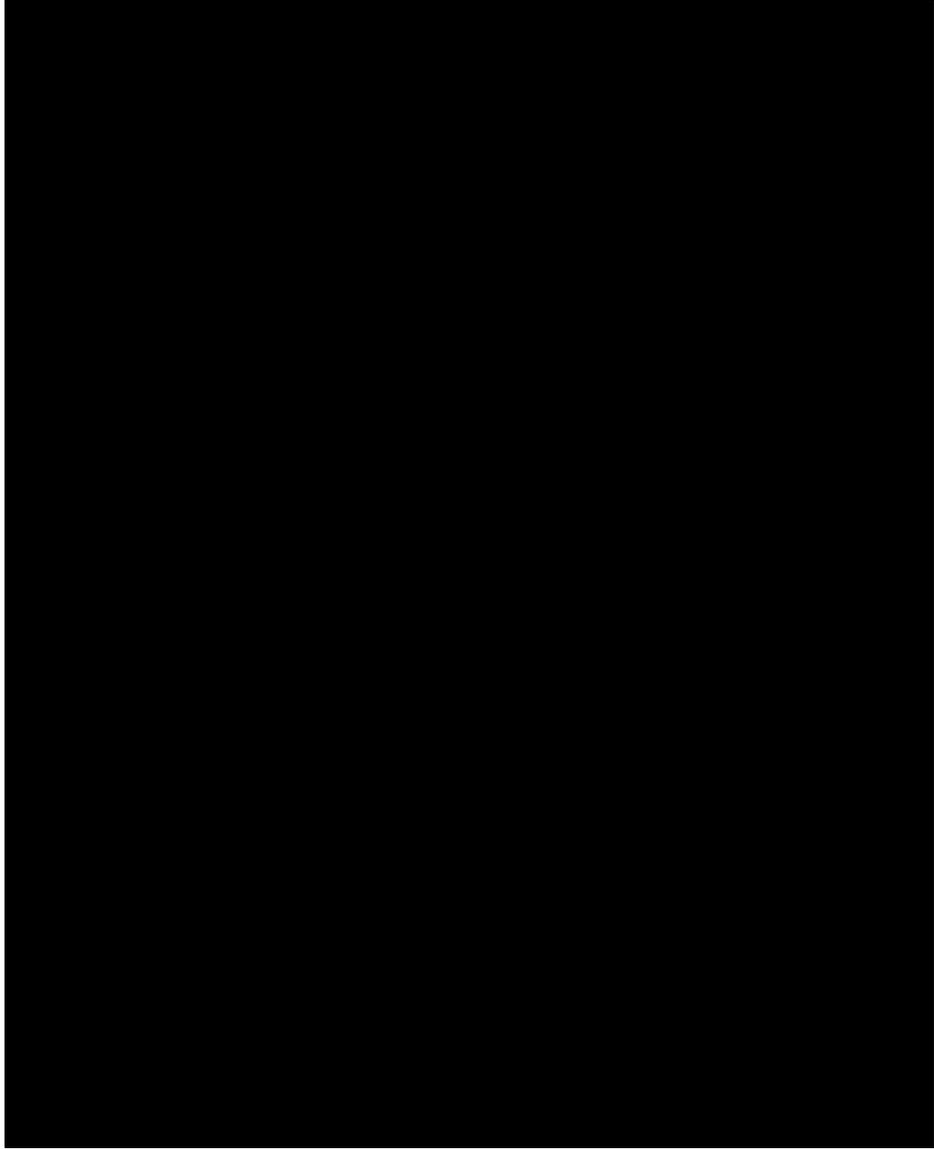
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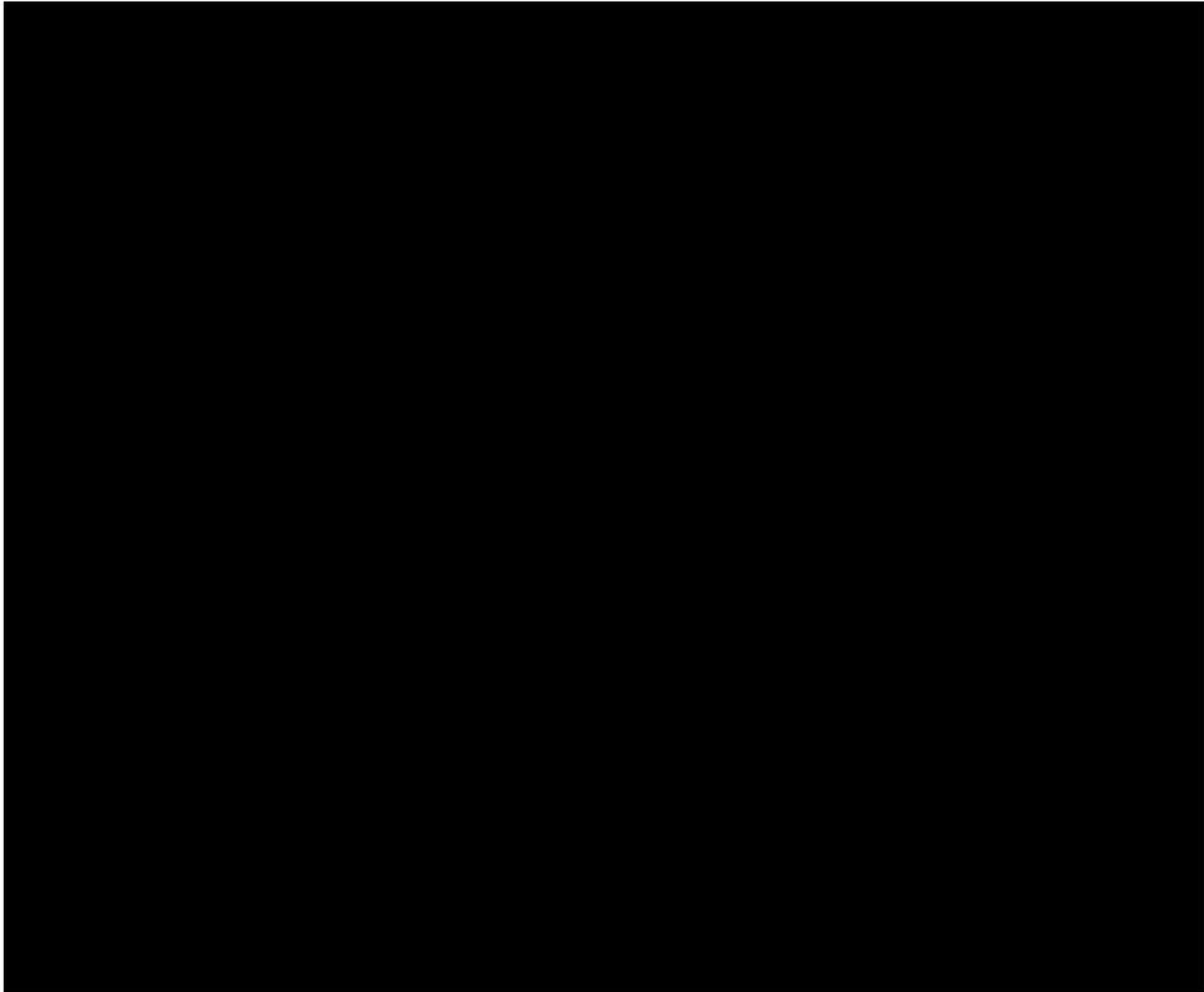
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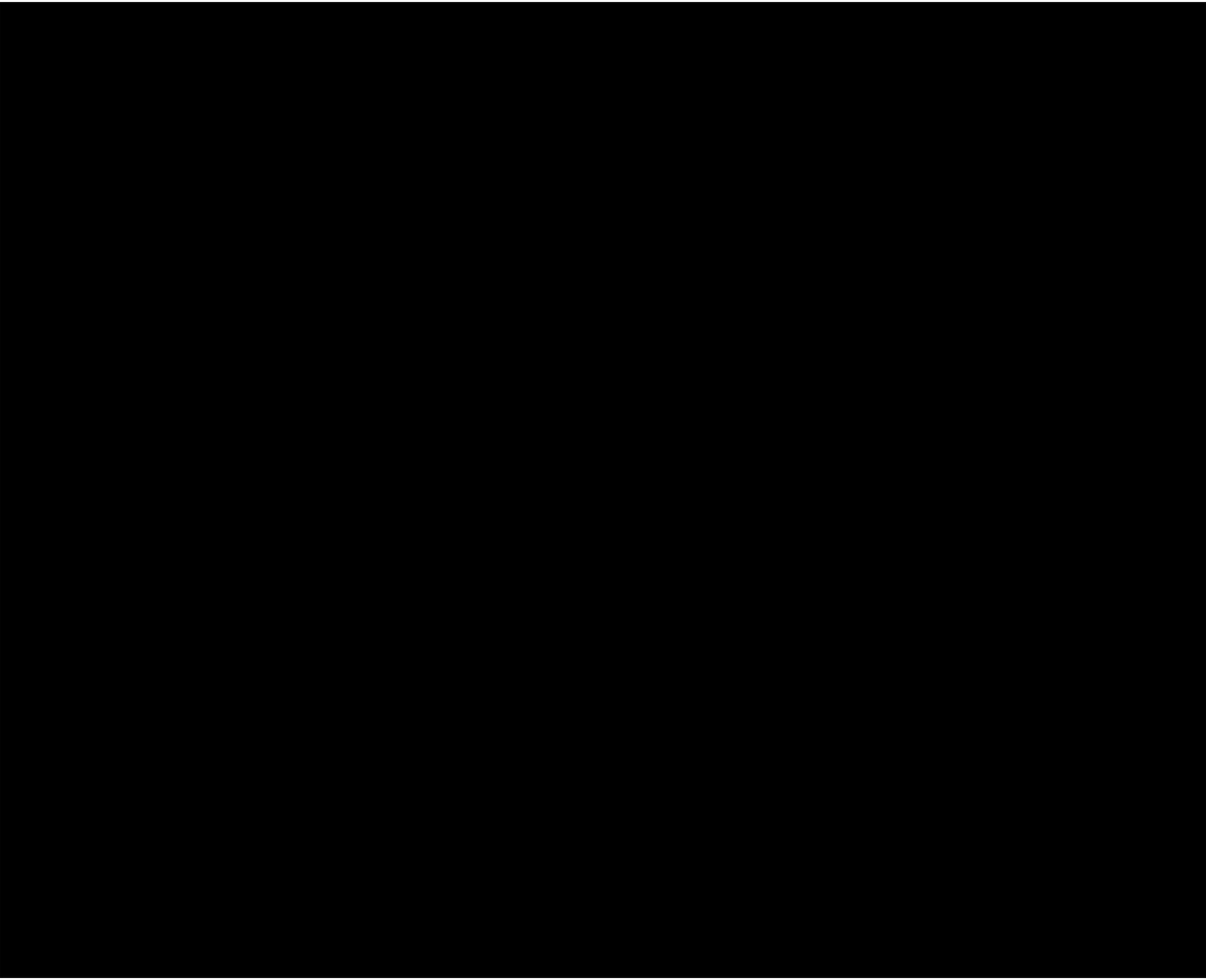
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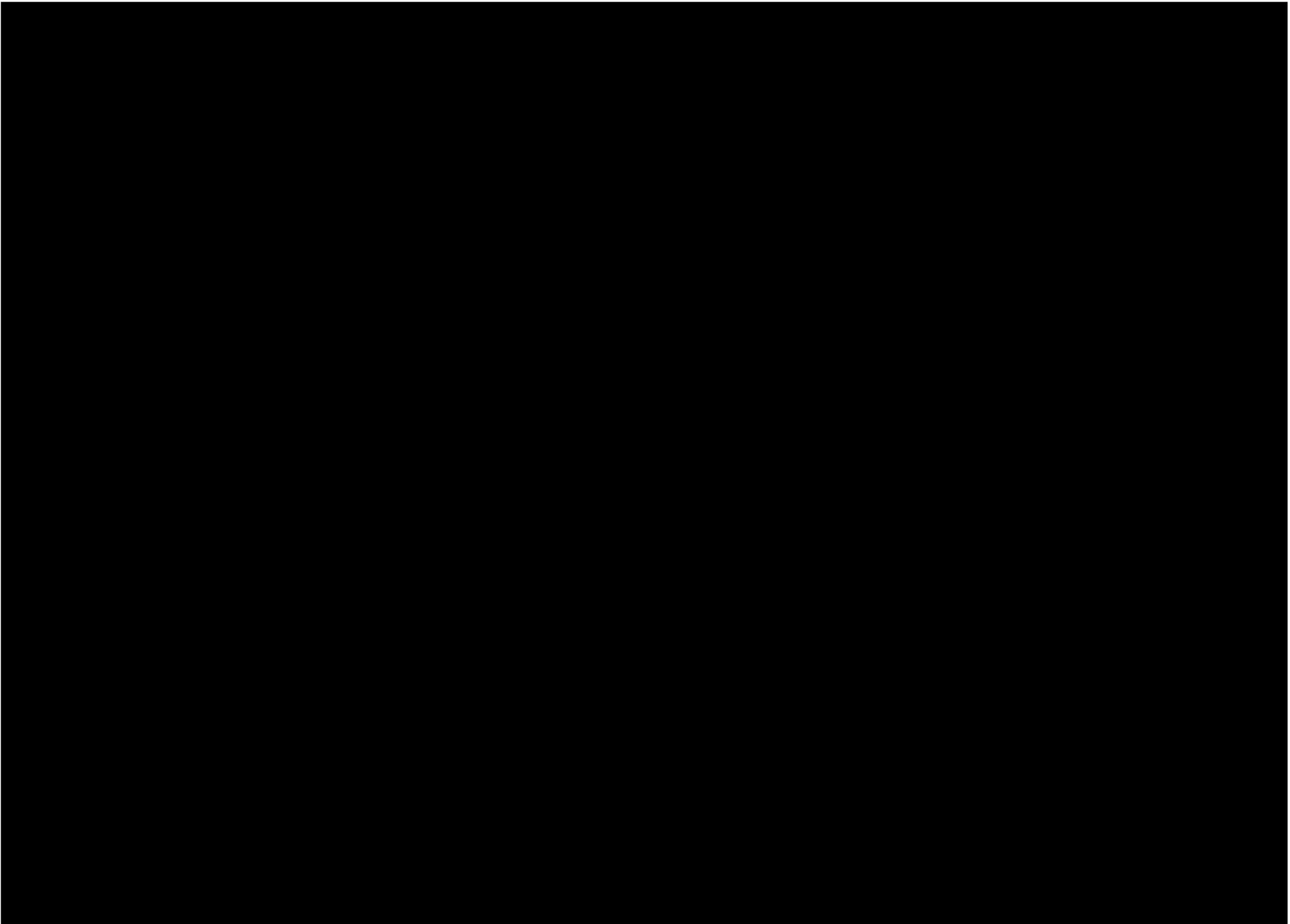


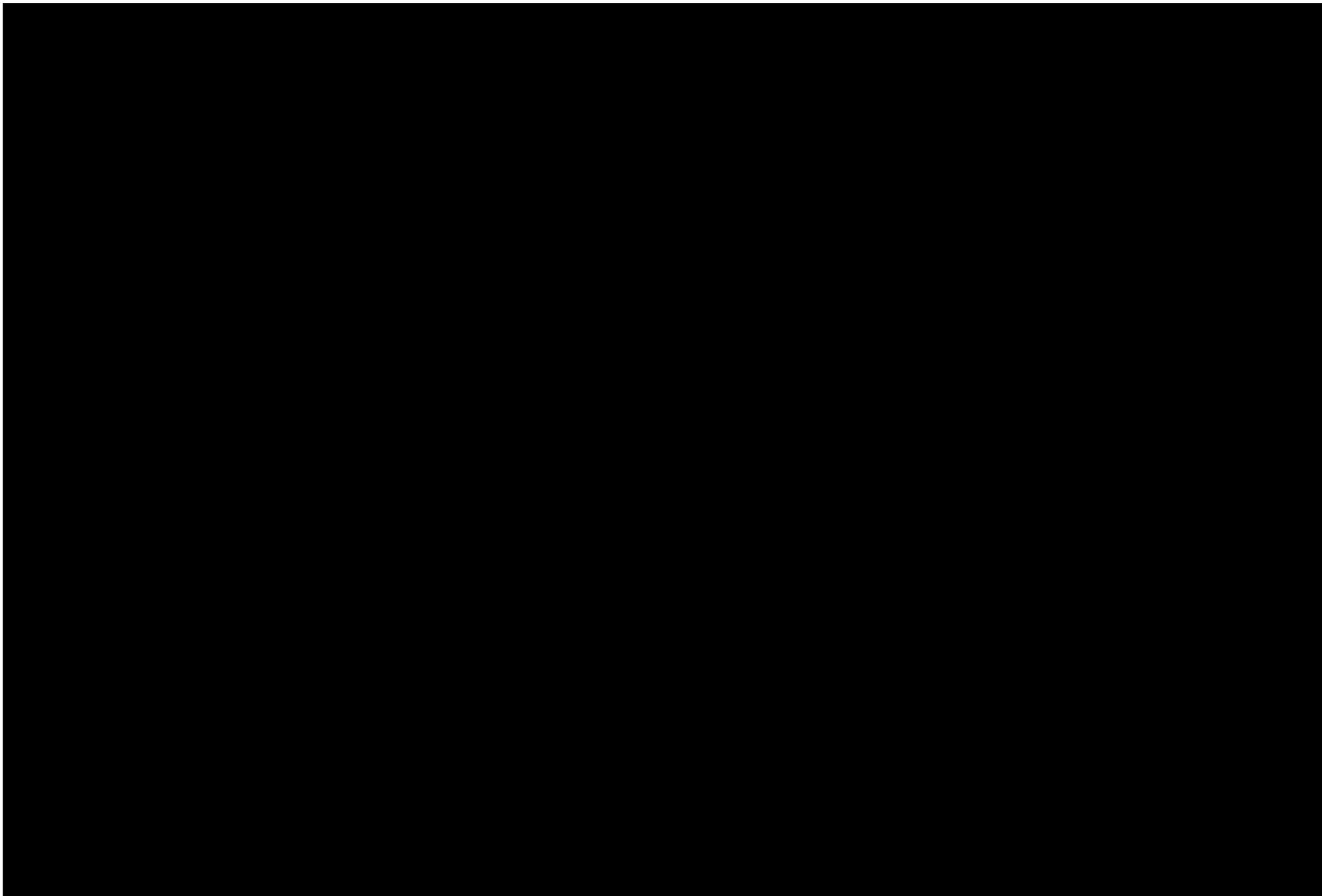


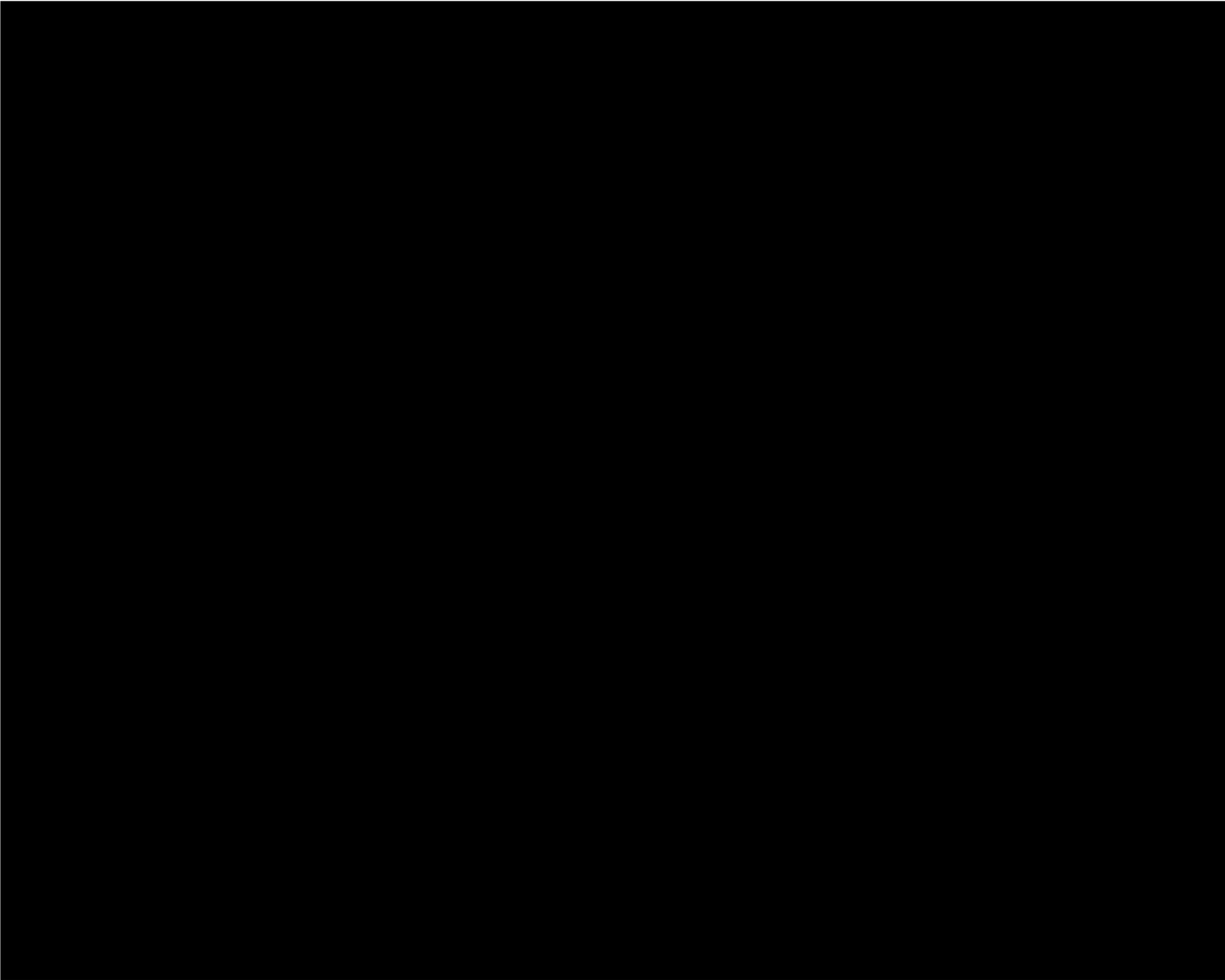
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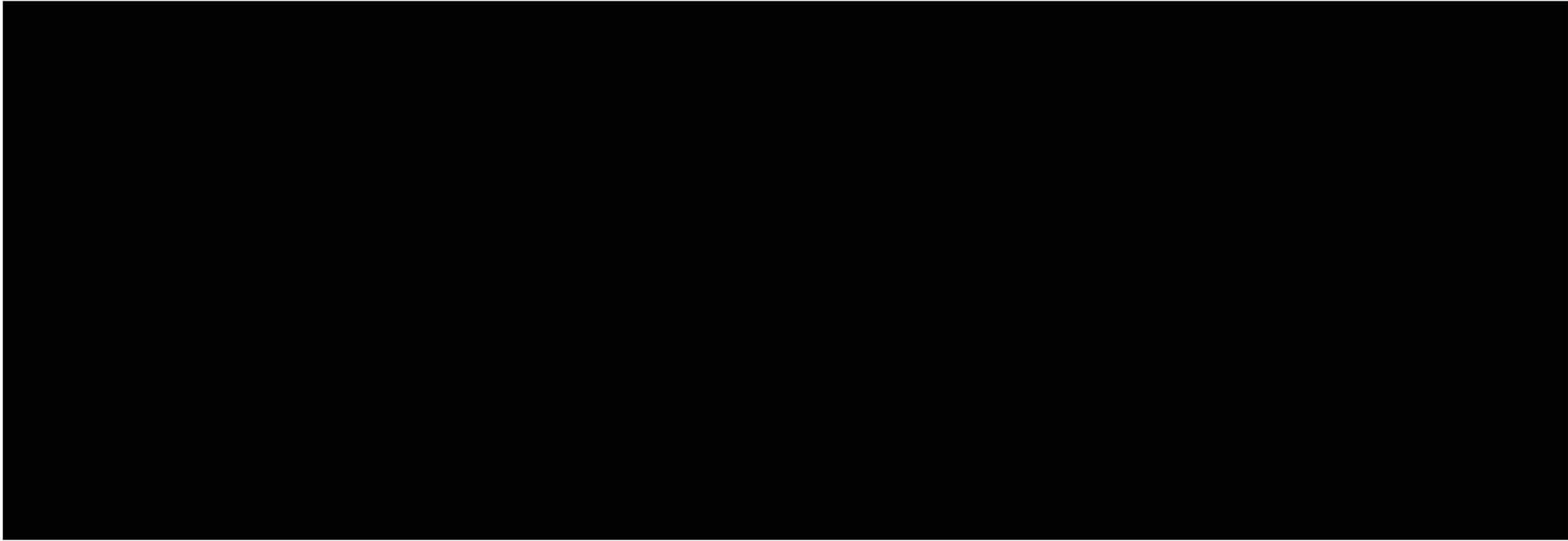


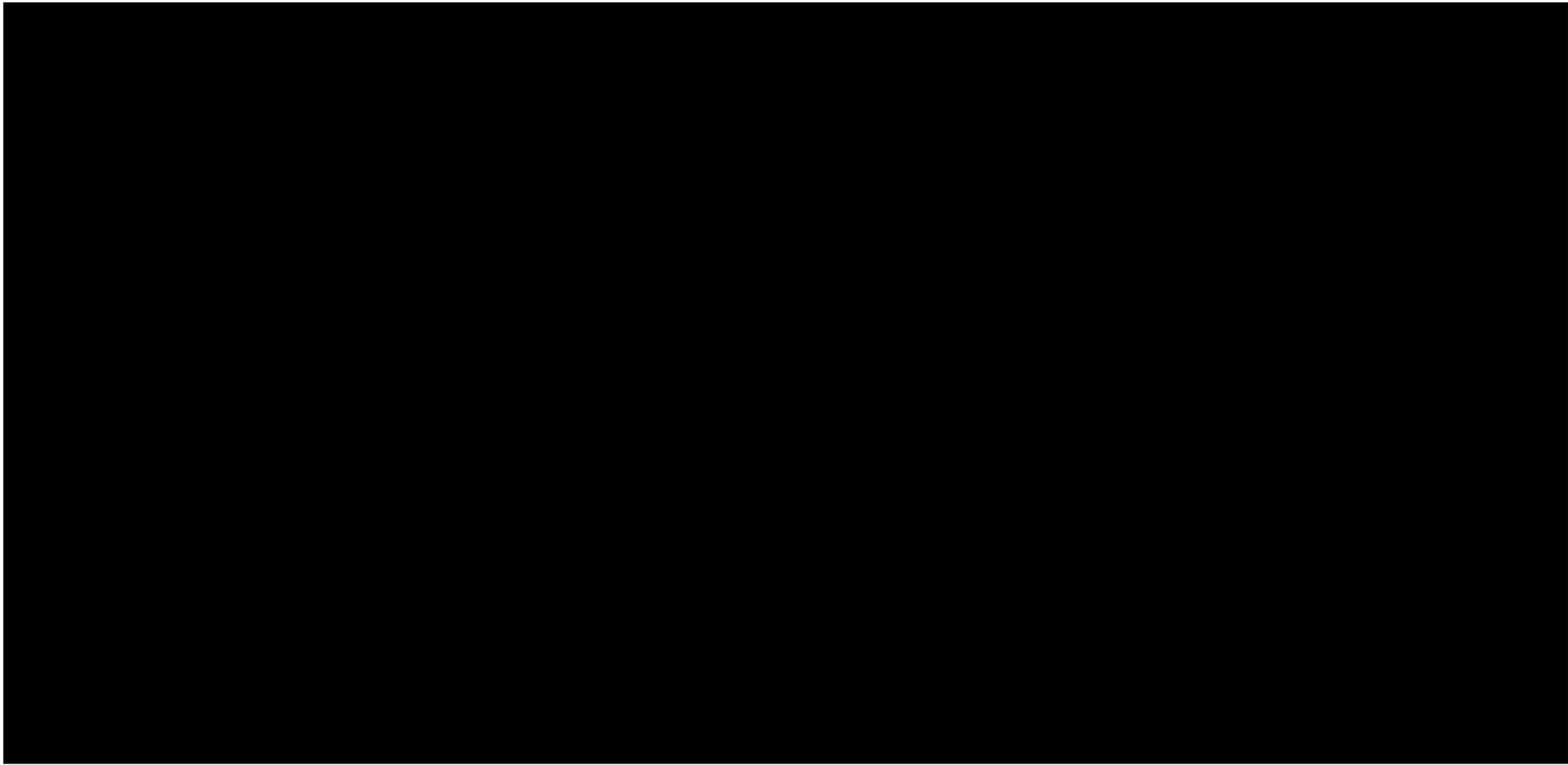


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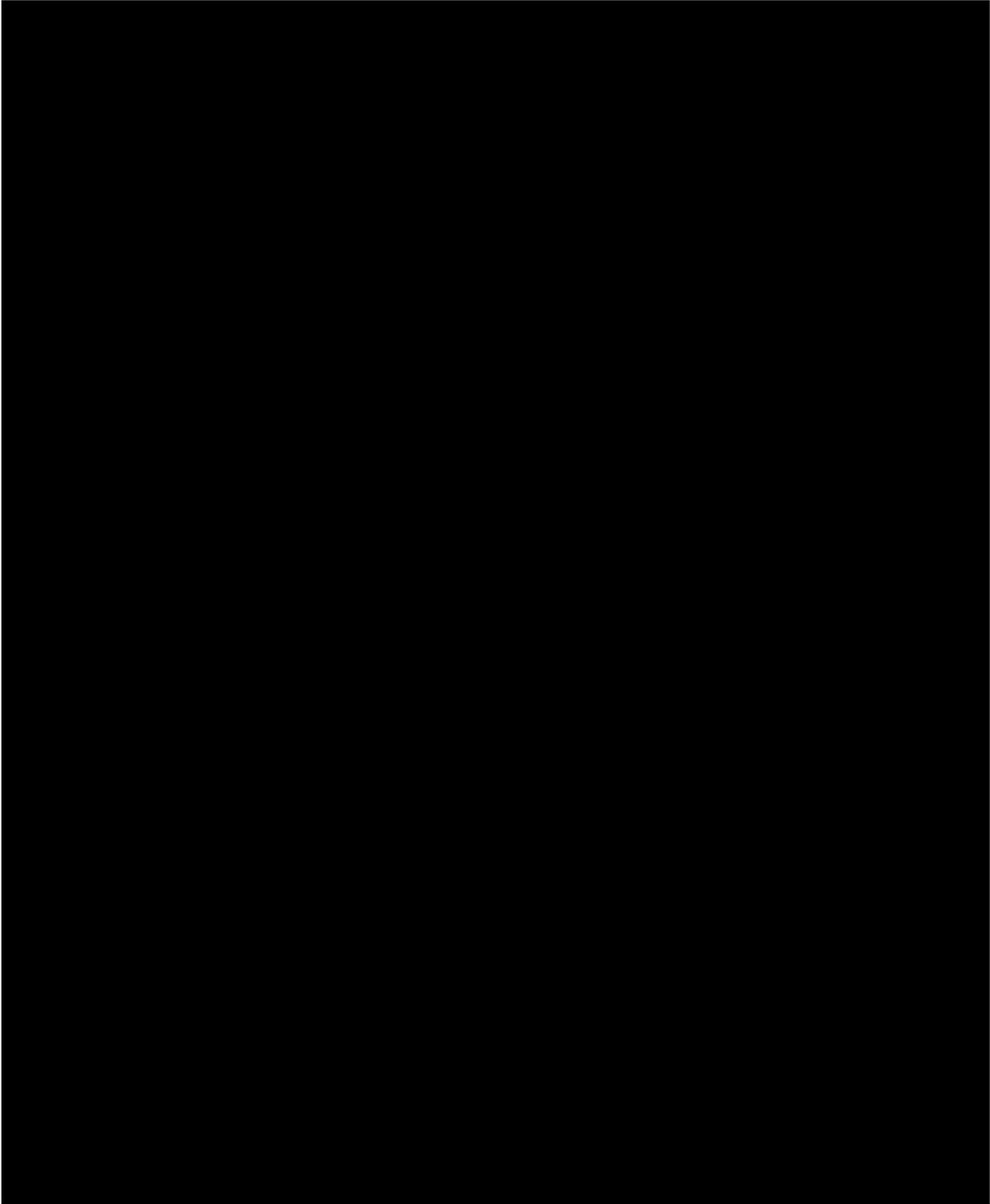




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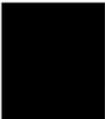
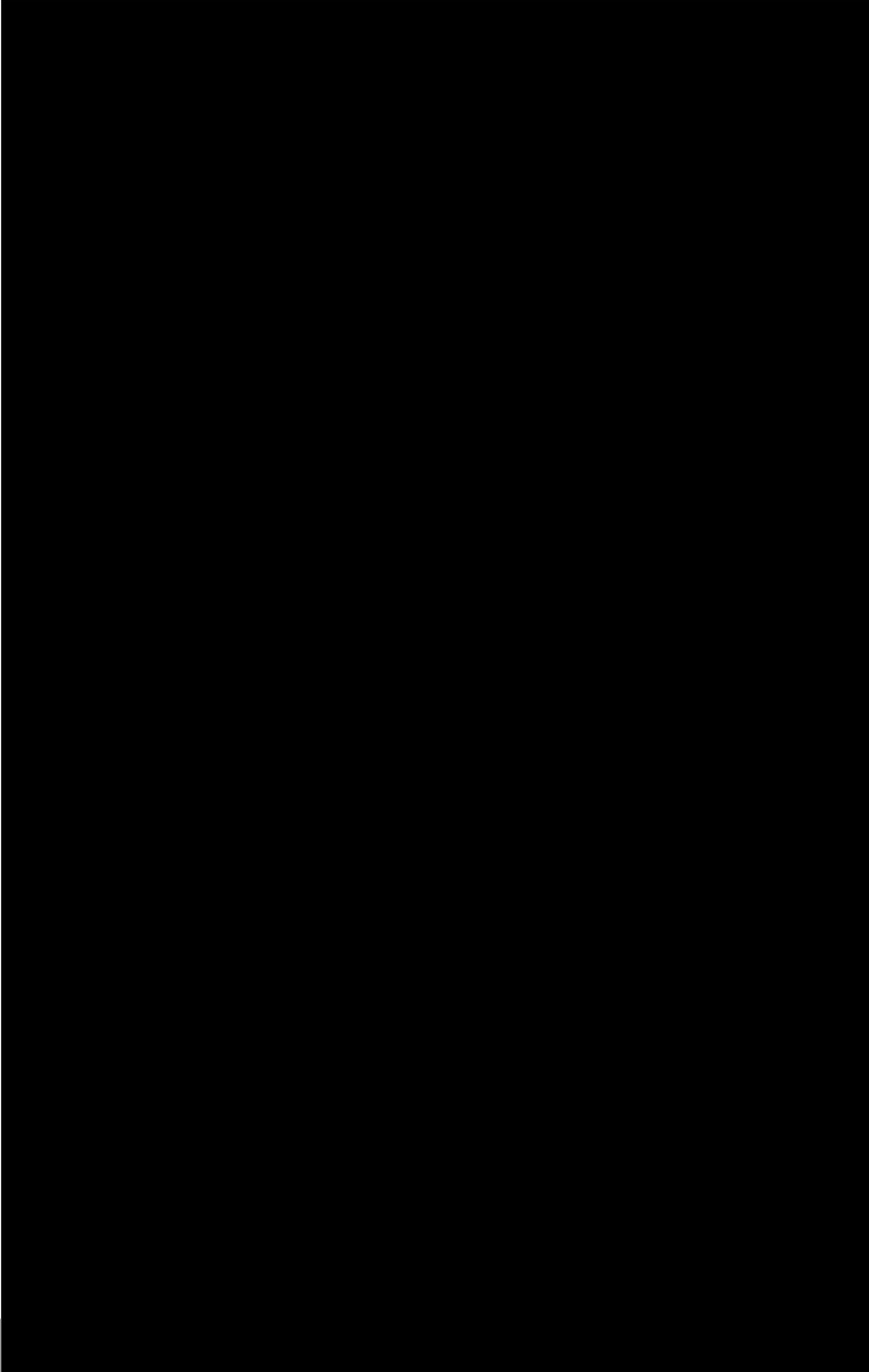
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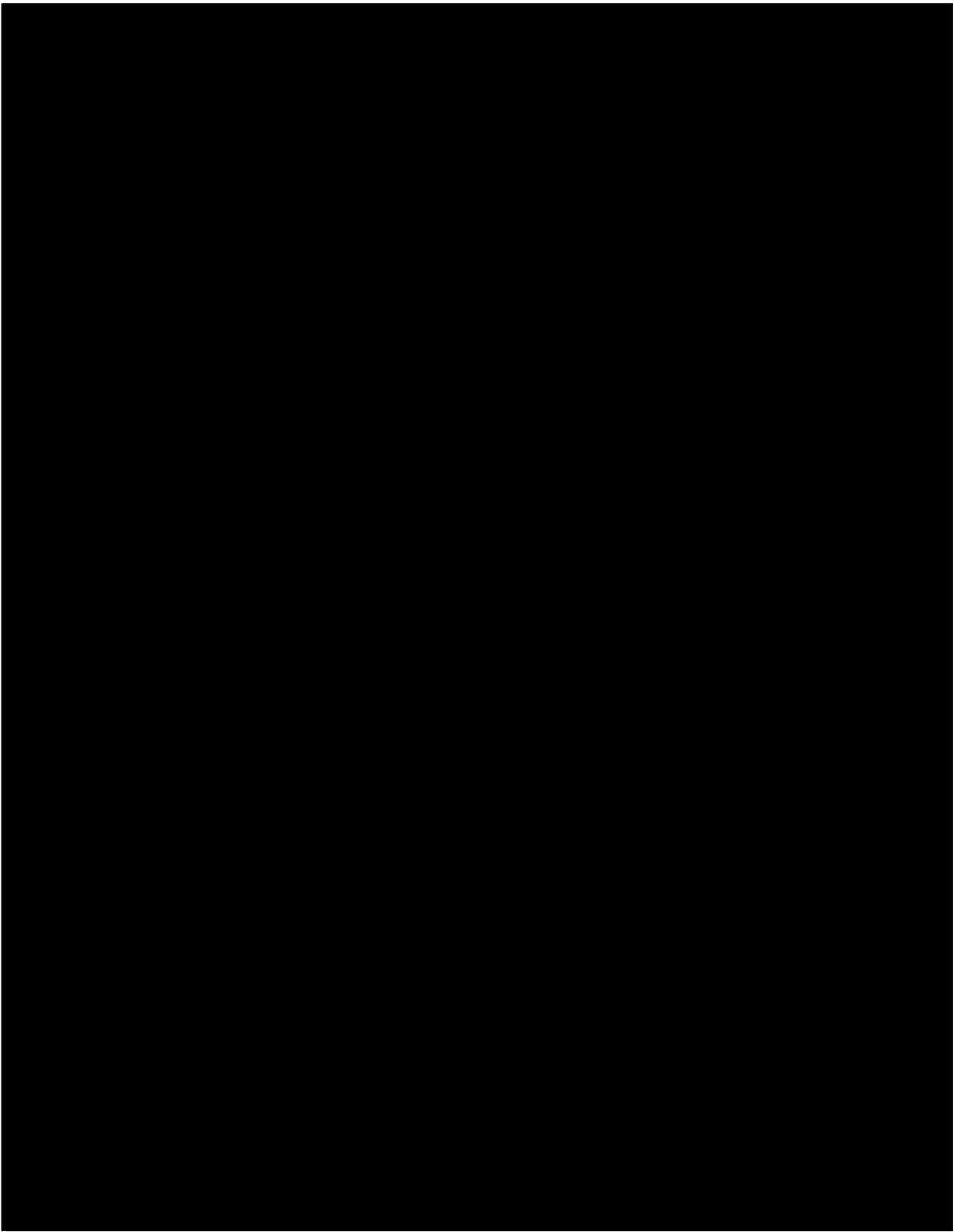




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ANNEX 5 : SCOPE OF DELIVERY REPORTS

This Annex sets out the topics which will be reported on by HS2 Ltd in the Monthly Delivery Reports and Annual Reports (if requested), which will be defined in more detail in accordance with Clause 23.7 and with regards to the High Speed Rail (Preparation) Act 2013.

1. **Monthly Delivery Report**

1.1 The Monthly Delivery Report shall report upon the following topics in relation to the Core Programme in the relevant month:

- (A) Safety.
- (B) Review by HS2 Ltd of HS2 Ltd's performance in terms of the delivery of the Core Programme, including:
 - (1) actual cost and Anticipated Final Cost compared to baseline and budget, both in year and progress against the Target Price or, as the case may be, Budget Envelope for the relevant Phase;
 - (2) actual and forecast achievement of the HS2 Ltd Dependency Milestones and the SoS Dependency Milestones compared to the Baseline Delivery Schedule and the Target Final Delivery Date for the relevant Phase;
 - (3) actual and forecast delivery of Core Programme Benefits compared to the Benefits Baseline (once it has been finalised) for the relevant Phase;
 - (4) a summary of Works and Functions in progress, completed in previous month, and planned for next month; and
 - (5) upcoming decisions and approvals.
- (C) Financial information, including monthly management accounts.
- (D) Key issues, including planned actions to resolve them.
- (E) Interfaces.
- (F) Quality and Environment.
- (G) Key risks, including current exposure rating, any change in exposure rating since the last period, and planned mitigation.
- (H) Details of any Performance Defaults.
- (I) Summary of any Changes (proposed and/or implemented) and/or anticipated Changes.
- (J) Information in relation to Land as set out in the Land & Property Strategy.

2. **Annual Report**

- 2.1 The Annual Report shall report upon the following topics in relation to the Core Programme in the relevant year:
- (A) A statement by the Chairman, including performance against the Strategic Themes.
 - (B) A report by the Chief Executive.
 - (C) A detailed report on HS2 Ltd's activities.
 - (D) A Financial Summary.
 - (E) The specification of performance targets and the extent to which these have been met.
 - (F) Information Requests – to include the number of requests for information received and HS2 Ltd's performance in meeting its obligations under:
 - (1) Freedom of Information Act 2000;
 - (2) The Environmental Information Regulations;
 - (3) The Data Protection Act 1998;
 - (4) The Re-use of Public Sector Information Regulations 2005.
 - (G) Statutory accounts.
 - (H) Review by HS2 Ltd of HS2 Ltd's performance in terms of the management, development and delivery of the Core Programme.
 - (I) Information in relation to Land as set out in the Land & Property Strategy.

ANNEX 6 : BUDGET ENVELOPES AND TARGET PRICES DOCUMENT

[REDACTED]

ANNEX 7 : INSTRUCTION AND CHANGE PROCEDURES

1. **Purpose**

This Annex sets out the structure of the processes for enabling (1) the SoS to instruct Non-Routine Advice and Policy Support work and (2) proposing and making changes to this Agreement. Full details of the processes involved are set out in separate guidance.

2. **Instructing Non-Routine Advice and Policy Support work**

Clause 18.4(B) sets out HS2 Ltd's role in undertaking Non-Routine Advice & Policy Support Functions and allows for the SoS to issue a Non-Routine Advice and Policy Support Instruction ("**NRAPSI**") in order to instruct HS2 Ltd to undertake work that falls within this function.

NRAPSI's do not constitute a proposal to amend this Agreement and cannot lead directly to the SoS issuing a Change Confirmation Notice instructing the adoption of such a change. However, the work undertaken as part of a NRAPSI may lead to a proposal to amend this Agreement, by either the SoS or HS2 Ltd in accordance with paragraph 3 below.

3. **Changing the Development Agreement**

3.1 An amendment to this Agreement may be made if it amounts to a Change (as defined in this Agreement), and shall be made when (1) the SoS issues a Change Confirmation Notice specifying the Change to be made and (2) HS2 Ltd has formally accepted the Change by returning a signed version of the Change Confirmation Notice to the SoS. Before a Change Confirmation Notice can be issued, either the SoS or HS2 Ltd shall formally propose a Change to this Agreement and HS2 shall provide a Change Appraisal within the agreed timescales, assessing the impact of the proposed Change on this Agreement. The requirements of a Change Appraisal are set out in paragraph 4 of this Annex.

3.2 In exceptional circumstances, and with the agreement of both the SoS and HS2 Ltd, the SoS may issue a Change Confirmation Notice without first instructing or receiving a Change Appraisal.

3.3 There is a separate Affirmation Process specified in Clause 32 (Change and Affirmation) which allows both the SoS and HS2 Ltd to seek, and the SoS to provide, clarifications of any aspect of the Core Programme, Wider Programme or this Agreement. The instruction and Change procedure set out in this Annex 7 cannot be used to seek clarifications to the Core Programme, the Wider Programme or this Agreement.

3.4 **SoS proposed Change**

- (A) If the SoS wishes to propose a Change, he/she shall serve a Secretary of State Change notice ("**SoSCN**") on HS2 Ltd. This shall:
- (1) set out details of the proposed Change in sufficient detail to enable HS2 Ltd to complete a Change Appraisal; and

- (2) include details of any additional information or documentation which must be included alongside the Change Appraisal.
- (B) Where possible, the SoS and HS2 Ltd will agree the timeframe for HS2 to provide its formal response to a SoSCN prior to it being issued.

3.5 **HS2 Ltd proposed Change**

If HS2 Ltd wishes to propose a Change it shall serve a HS2 notice of Change ("**HS2 NoC**") on the SoS. This shall simultaneously (unless otherwise agreed):

- (A) set out details of the proposed Change; and
- (B) include a completed Change Appraisal in respect of that proposed Change in accordance with paragraph 4 of this Annex 7 (Instruction and Change Procedure).

4. **Change Appraisal**

4.1 HS2 Ltd shall ensure that each "Change Appraisal" report provided pursuant to paragraphs 3.1 and 3.2 of this Annex 7 (Instruction and Change Procedure) includes, as a minimum:

- (A) a description of the Change;
- (B) in the case of a Change proposed by HS2 Ltd pursuant to paragraph 3.5 of this Annex 7 (Instruction and Change Procedure), HS2 Ltd's reasons for requesting the proposed Change;
- (C) HS2 Ltd's proposal in respect of the funding of the proposed Change (including details of any additional funding required). This should include details of the annualised spend profile, including how any spend required in the current financial year will be met within existing budget allowances;
- (D) which version of each of the following documents it has based its impact assessment upon:
 - Baseline Delivery Schedule
 - Baseline Cost Model
 - Baseline Operational Cost Model
 - Benefits Baseline
 - Sponsor's Requirements
 - Functional Response
 - Business Case;
- (E) HS2 Ltd's detailed assessment of the impact of the proposed Change on the following:

- (1) strategic fit;
 - (2) technical feasibility (including construction feasibility and safety);
 - (3) cost, including the Budget Envelope and/or the Target Cost, how it will manage that cost and whether the cost can be funded by a saving made elsewhere;
 - (4) Baseline Delivery Schedule;
 - (5) Baseline Cost Model;
 - (6) Baseline Operational Cost Model;
 - (7) Benefits Baseline;
 - (8) Target Final Delivery Date for the relevant Phase;
 - (9) the Sponsor's Requirements and/or the Functional Response;
 - (10) land and property;
 - (11) the Bill(s) relating to any Phase/Additional Provisions to the Bill(s) relating to any Phase (including environment);
 - (12) whether the proposal will set a precedent that may have a wider impact;
 - (13) mitigation of existing risks or opportunities (including quantification if possible);
 - (14) introduction of new risks or opportunities (including quantification if possible);
 - (15) Government, community and stakeholders;
 - (16) the Business Case;
 - (17) operations and maintenance, including potential impact on whole life costs;
 - (18) value for money to the SoS; and
 - (19) whether the proposal will have any wider political implications; and
- (F) such other information, evidence and/or documentation as may be required by the SoS.

5. **Procedure following submission of a Change Appraisal**

- 5.1 As soon as practicable after the SoS receives the Change Appraisal and in any event within a period of 30 Working Days (or within such shorter timeframe as may be agreed between the Parties in respect of petitioner management issues) from the date of the SoS's receipt of the Change Appraisal (the "Change Appraisal Consultation Period"), the Parties shall discuss and agree, acting reasonably, the matters set out in the Change Appraisal. During such Change Appraisal Consultation Period:

- (A) the SoS may request that HS2 Ltd provides further information, evidence and/or documentation relating to the proposed Change;
- (B) HS2 Ltd shall provide all information, evidence and documentation required pursuant to a request under paragraph 5.1(A) of this Annex 7 (Instruction and Change Procedure) on an open book basis; and
- (C) a final version of the Change Appraisal shall be agreed between the Parties and HS2 Ltd shall provide a copy of such agreed version of the Change Appraisal to the SoS.

5.2 Within 10 Working Days (or within such shorter timeframe as may be agreed between the Parties in respect of petitioner management issues, or within such longer timeframe as may be required by either Party to enable it to comply with its internal governance procedures or any related Governmental approval processes, as appropriate) of the SoS's receipt of the agreed version of the Change Appraisal in accordance with paragraph 5.1(C) of this Annex 7 (Instruction and Change Procedure), the SoS shall either:

- (A) issue a notice instructing HS2 Ltd to proceed with the implementation of the Change ("Change Confirmation Notice"). Such Change Confirmation Notice shall:
 - (1) include the SoS's determination (the "Change Funding Determination") as to whether:
 - (a) the SoS will provide additional funding to HS2 Ltd for the implementation of the Change (or part thereof) in which case the Change Confirmation Notice shall include details of the SoS's consequential amendments to the Target Price, or as the case may be, the Budget Envelope, and the Baseline Cost Model and the Baseline Operational Cost Model; or
 - (b) HS2 Ltd will fund the Change (or part thereof) out of its existing funding resources, provided that such arrangement does not materially affect HS2 Ltd's ability to comply with any or all of its obligations under this Agreement; and
 - (2) confirm any amendment, constituting a Change, to be made to any provision of the Development Agreement; or
- (B) issue an instruction not to proceed with the proposed Change (a "Change Rejection Notice").

6. **Implementation of Change**

6.1 Following the issue of any Change Confirmation Notice, the Parties shall promptly take such action, if any, as is necessary to facilitate the Change (including making amendments to this Agreement, the Core Programme Documents and/or other documents relating to the Core Programme) and HS2 Ltd shall exercise its rights under the Delivery Contracts (if applicable) to procure the implementation of the Change.

6.2 Each Change shall be funded in accordance with the Change Funding Determination set out in the relevant Change Confirmation Notice.

7. **Costs**

- 7.1 In accordance with Clause 18.4(B)(7) (Non-Routine Advice & Policy Support Functions) if HS2 Ltd does not have funding allocated for work carried out as Non-Routine Advice & Policy Support Functions within the Budget Envelope or Target Price for the current Phase, or otherwise have funding available to it pursuant to the Financial Annex, it shall be entitled (before commencing such work) to request additional funding from the SoS.
- 7.2 HS2 Ltd shall bear all costs, fees and expenses it incurs in preparing Change Appraisals for all Changes proposed by HS2 Ltd in accordance with paragraph 3.5 of this Annex 7 (Instruction and Change Procedure).
- 7.3 The SoS shall be responsible for payment to HS2 Ltd of the costs, fees and expenses reasonably and properly incurred by HS2 Ltd in preparing and amending a Change Appraisal in respect of any Change proposed by the SoS in accordance with paragraph 3.1 of this Annex 7 (Instruction and Change Procedure), provided always that HS2 Ltd includes in its Monthly Delivery Report a report showing:
- (A) the costs, fees and expenses reasonably and properly incurred by HS2 Ltd (pursuant to this paragraph 7.3 of this Annex 7 (Instruction and Change Procedure)) during the relevant month;
 - (B) HS2 Ltd's estimate of the costs, fees and expenses which it anticipates it will incur in total.

8. **Petitioner management Changes**

In the event that a Change arises in connection with petitioner management issues, the Parties may agree to use a fast track procedure (which may involve agreeing (and complying with) timeframes which are shorter than those specified in this Annex 7 (Instruction and Change Procedure)) for the purposes of agreeing such Change, in order that the Parties may consider and (if such Change is agreed) implement such Change in accordance with timescales appropriate to that decision.

9. **HS2 Ltd's objection to a Change**

- 9.1 Notwithstanding any other provision in this Annex, if at any time HS2 Ltd considers that, in the reasonable opinion of HS2 Ltd, a Change is either technically unfeasible, unsafe or contrary to any Applicable Law, then HS2 Ltd shall be entitled either to object to such Change, or to propose any alternatives to the proposed Change, that would address HS2 Ltd's concerns, and shall not be required to continue with the procedure in this Annex, provided that it submits an explanation of its reasons for this opinion.
- 9.2 If the SoS disagrees with HS2 Ltd's opinion given pursuant to paragraph 9.1 of this Annex 7 (Instruction and Change Procedure), then the Parties shall seek to agree the matter and may refer the matter for resolution under the Dispute Resolution Procedure. HS2 Ltd shall not be obliged to take any further action in relation to the Change pending the resolution of such Dispute. If it is agreed or determined pursuant to the Dispute Resolution Procedure that HS2 Ltd's objection is valid, the proposed Change shall be withdrawn.

ANNEX 8 : STRATEGIC GOALS AND OBJECTIVES

Programme Strategic Goals and Objectives

HS2 will be a catalyst for sustained and balanced economic growth across the UK	HS2 will add capacity and connectivity as part of a 21 st century integrated transport system	HS2 will deliver value to the UK tax payer and passenger	HS2 will set new standards in customer experience	HS2 will create opportunities for skills and employment	HS2 will set new standards for health, safety and security in the construction and operation of the railway	HS2 will create an environmentally sustainable solution and be a good neighbour to local communities
To enhance the productivity of the UK by connecting cities and supporting local, regional and rural growth strategies	To deliver the required capacity, journey time, reliability and availability	To deliver the programme on time and on cost while achieving the expected benefits	To be the mode of first choice and to deliver passenger experience and customer service that is recognised worldwide as leading the way in high speed travel	To create sustainable job opportunities for young people, local people and those from diverse groups	To prevent injury and proactively manage risk	To design every part of HS2 and its service to be sympathetic to the people and places we affect and to stand the test of time
To maximise the business growth opportunities in the UK for our suppliers, including in the sharing of international best practice, and make bidding for appropriate contracts as accessible as possible for local businesses and SMEs	To integrate seamlessly with complementary transport modes	To deliver and operate a quality railway efficiently and to ensure commercial viability	To place people at the heart of our design, setting new standards for travel and ensuring HS2 is accessible to all passengers	To foster and develop talent and to create an engaged and highly skilled workforce for the delivery of HS2	To manage the health and wellbeing of all our workers to create a new better standard in occupational health	To actively communicate with neighbours and interest groups to minimise the impact of HS2 construction and operation on people and the environment.
To develop all stations and depots in ways that facilitate regional and local regeneration and development	To maximise benefits for the whole UK transport network	To actively seek innovative opportunities to achieve new standards and practices in order to increase whole life value		To be an exemplar of EDI practice	To protect HS2 assets and those of its suppliers	To design, construct and operate HS2 to reduce carbon and promote sustainably sourced resources

ANNEX 9 : OPERATIONAL ANNEX

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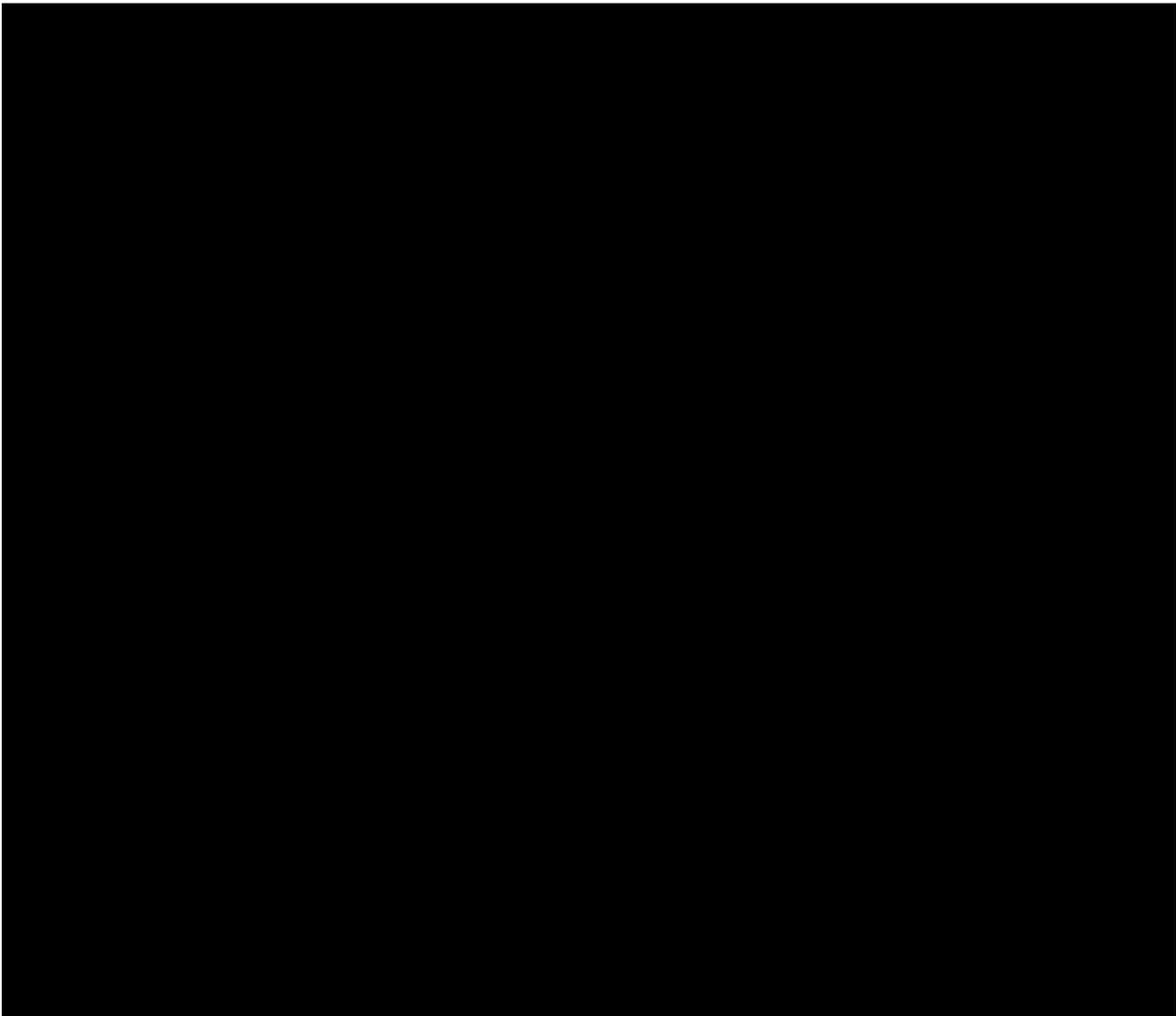
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ANNEX 10 : FINANCIAL ANNEX



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ANNEX 11 : WCP FRANCHISEE

1. Definitions and Interpretation

The definitions set out in both Clause 1.1 of this Agreement and in this paragraph 1 of this Annex 11 shall apply and have effect in relation to the words and expressions used in this Annex 11:

"Accepted Programme" means the programme for delivering the Accepted Programme Specific Requirements pursuant to the Franchise Agreement in the form approved by the SoS, as updated from time to time in accordance with the Franchise Agreement;

"Accepted Programme Specific Requirement" means those Shadow Operator Services set out in schedule 18.2 of the Franchise Agreement (Accepted Programme Specific Requirements) as updated from time to time in accordance with schedule 9.1B or schedule 18.1 (Shadow Operations) of the Franchise Agreement;

"Access Agreement" has the meaning given to the term **"access agreement"** in Section 83(1) of the Railways Act 1993;

"Affiliates" means, in respect of any person ("A"):

- (A) any other person which A controls or which controls A; or
- (B) any person which is controlled by any other Affiliate of A;

and for the purpose of this definition neither Network Rail nor HS2 Ltd shall be construed as being an Affiliate of the SoS;

"Collaboration Agreement" means the statement agreed among the WCP Franchisee, the SoS and HS2 Ltd, setting out the manner in which the parties thereto will collaborate for, among other reasons, delivery of responsibilities under this Agreement;

"Franchise Agreement" means the franchise agreement to be executed by the SoS and the WCP Franchisee, as may be amended from time to time;

"Functional Aspect" means the following:

- (A) each aspect of the WCP passenger proposition; and
- (B) each of the rolling stock aspects listed at paragraph 27.1 of schedule 18.2 (Accepted Programme Specific Requirements) of the Franchise Agreement;

"Functional Requirements" means the functionality and the capability requirements, developed by the WCP Franchisee or determined by the SoS in accordance with schedule 18.2 (Accepted Programme Specific Requirements) of the Franchise Agreement, which the WCP Franchisee requires that HS2 Ltd will procure for each separate Functional Aspect, including the acceptance methodology and rationale;

"Functional Requirement Acceptance Criteria" the acceptance criteria (or equivalent, where the performance of services is being procured) relating to such Functional Requirement;

"Functional Requirement Asset" means any asset (including any property, right or liability) relating to any Functional Requirement or Functional Requirements;

"High Speed Rolling Stock Lease" means any operating lease agreement in respect of the High Speed Rolling Stock which may be entered into between:

- (A) the WCP Franchisee, as lessee; and
- (B) either HS2 Ltd or (if the Private Finance Option has been exercised) the relevant Private Finance Owner, as lessor;

"High Speed Rolling Stock" means the conventional-compatible high speed rolling stock which is to be procured by or on behalf of HS2 Ltd, and manufactured and supplied by the TMM pursuant to the High Speed Rolling Stock MSA;

"High Speed Rolling Stock MSA" means the manufacture and supply agreement to be entered into between HS2 Ltd and the TMM in respect of the High Speed Rolling Stock;

"High Speed Rolling Stock TSA Novation" means any deed of novation in relation to the High Speed Rolling Stock TSA which the WCP Franchisee may, in accordance with the provisions of paragraph 6.1 of schedule 18.3 (Transitional Programme Specific Requirements) of the Franchise Agreement, be required to enter into, and under which the WCP Franchisee would receive a transfer of the rights and obligations of HS2 Ltd under the High Speed Rolling Stock TSA;

"High Speed Rolling Stock TSA" means the train services agreement to be entered into initially by HS2 Ltd with the TMM, in relation to the maintenance of the High Speed Rolling Stock;

"High Speed Services" means the passenger services which use the HS2 Network for some part of their route and are operated by the High Speed Rolling Stock;

"Home Depot" means a new depot to be constructed at Washwood Heath in Birmingham, to be procured by HS2 Ltd for the purposes of maintaining, servicing and stabling the High Speed Rolling Stock and any further or successor fleets of rolling stock operating on the HS2 Network;

"HS2 Network" means the network that is being constructed as part of the Core Programme in respect of which it is intended that HS2 Ltd becomes the Infrastructure Manager (and excluding any infrastructure delivered on the network for which another body, including Network Rail, is already the Infrastructure Manager);

"HS2 Related Aspects" means those parts of any draft (or varied) Accepted Programme or Transitional Programme, or any proposed amendment to the Franchise Agreement, which affect HS2 Ltd's ability to comply with its obligations in this Agreement;

"Partnership Protocol" means the non-binding document with the title "Partnership Protocol" agreed between the WCP Franchisee and HS2 Ltd prior to the WCP Shadow Operator Start Date;

"Private Finance Option" means the option to be retained by HS2 Ltd, and contemplated in each of the High Speed Rolling Stock MSA and High Speed Rolling Stock TSA, under which HS2 Ltd may procure the provision of private finance to fund, wholly or partly, the High Speed Rolling Stock;

"Private Finance Owner" means any person which becomes the owner of the High Speed Rolling Stock, following an exercise of the Private Finance Option;

"Required WCP Franchisee Co-operation" means the necessary scope and form of co-operation required from the WCP Franchisee (including in relation to costs and funding and timescales, in compliance with any instructions, administrative practices, formal or informal guidance, policies, measures or publications advised by the SoS) in the Accepted Programme prepared by the WCP Franchisee, as updated pursuant to schedule 18.4 (Annual Review) and/or schedule 9.3B (Variations to the Franchise Agreement) of the Franchise Agreement, to enable HS2 Ltd to comply with any of its obligations under this Agreement;

"Shadow Operator Annual Review" means an annual review carried out (or to be carried out) in accordance with schedule 18.4 (Shadow Operator Annual Review) of the Franchise Agreement;

"Shadow Operator" means the entity that will deliver the Shadow Operator Services pursuant to the Franchise Agreement;

"Shadow Operator Delay Event" means:

- (a) any failure by HS2 Ltd to perform (or procure the performance of) any activity (including producing or delivering any item) on or before a date agreed in advance by the WCP Franchisee and HS2 Ltd;
- (b) any failure by HS2 Ltd to respond promptly to any reasonable request by the WCP Franchisee to agree in advance a date for HS2 Ltd to perform (or procure the performance of) any activity;
- (c) any failure by Network Rail to perform (or procure the performance of) any activity (including producing or delivering any item) on or before a date agreed in advance by the WCP Franchisee and Network Rail;
- (d) any failure by Network Rail to respond promptly to any reasonable request by the WCP Franchisee to agree in advance a date for Network Rail to perform (or procure the performance of) any activity;
- (e) any failure by the SoS to perform (or procure the performance of) any activity (including producing or delivery any item) on or before a date agreed in advance by the WCP Franchisee and the SoS; or

- (f) any failure by the SoS to respond promptly to any reasonable request by the WCP Franchisee to agree in advance a date for the SoS to perform (or procure the performance of) any activity,

in each case, which causes the WCP Franchisee to be delayed in the performance of, or unable to perform any part of, the Shadow Operator Services;

"Shadow Operator Performance Period" means the period for which the WCP Franchisee's performance is assessed in accordance with schedule 18.4 of the Franchise Agreement;

"Shadow Operator Services" means all of the obligations to be performed by the WCP Franchisee in accordance with schedule 18 (Shadow Operator) of the Franchise Agreement, including the provision of services, the exercise of rights and all other activities that the WCP Franchisee is required to perform, including any of such obligations as the WCP Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;

"Shadow Operator Stakeholder Survey" means a stakeholder survey in the form designed in accordance with the provisions of paragraph 15 of schedule 18.1 (Shadow Operations) of the Franchise Agreement;

"Track Access Agreement" means each Access Agreement between HS2 Limited and the WCP Franchisee which permits the WCP Franchisee to provide passenger services on the HS2 Network;

"Transitional Programme" means the programme of activities undertaken by the WCP Franchisee to enable the commencement of High Speed Services as updated in accordance with schedule 9.1B or schedule 18.4 (Transitional Programme Specific Requirements) of the Franchise Agreement;

"Transitional Programme Specific Requirements" means those Shadow Operator Services set out in schedule 18.3 (Transitional Programme Specific Requirements) of the Franchise Agreement;

"TMM" means the train manufacturer and maintainer to be appointed by HS2 Ltd in respect of the procurement of the High Speed Rolling Stock;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

"WCP Franchisee" means the entity appointed as such by the SoS pursuant to the Franchise Agreement by the SoS;

"WCP Shadow Operator Start Date" has the meaning given to "Shadow Operator Start Date" in the Franchise Agreement; and

"WCP Stakeholder Survey" means the Shadow Operator Stakeholder Survey undertaken by the WCP Franchisee in accordance with the Franchise Agreement.

2. **Obligation to perform**

Notwithstanding any other provision of this Agreement, or the appointment of the WCP Franchisee as Shadow Operator from the WCP Shadow Operator Start Date, HS2 Ltd shall continue to perform all obligations imposed upon it in this Agreement unless expressly allocated to the WCP Franchisee in the Franchise Agreement, including in the Accepted Programme and the Transitional Programme.

3. **Partnership Protocol**

HS2 Ltd shall discuss and agree with the WCP Franchisee the content of the Partnership Protocol and shall enter into such protocol with the WCP Franchisee as soon as it is agreed. HS2 Ltd shall not agree to amend the Partnership Protocol without the prior consent of the SoS.

4. **Track Access Agreement**

HS2 Ltd shall:

4.1 develop and obtain approval from the ORR for a track access agreement; and

4.2 offer such approved terms to the WCP Franchisee,

and the SoS shall procure that the WCP Franchisee (or other successful operator) signs such agreement no later than the date falling eighteen months prior to the start date for Trial Operations.

5. **Collaboration Agreement**

Each Party shall comply with all provisions of the Collaboration Agreement which are referable to it (notwithstanding that such provisions are stated to be non legally binding in the Collaboration Agreement).

6. **Reports**

6.1 HS2 Ltd shall review any reports provided to it by the SoS which have been produced by the WCP Franchisee pursuant to the Franchise Agreement and shall provide its professional opinion to the SoS on the content of each such report.

6.2 When requested by the SoS, HS2 Ltd shall provide to the WCP Franchisee any documentation produced by it pursuant to this Agreement which the SoS requires the WCP Franchisee to review pursuant to the Franchise Agreement.

7. **Accepted Programme, Transitional Programme and amendments to Franchise Agreement**

HS2 Ltd proposed amendments to the Accepted Programme and/or Transitional Programme

7.1 By no later than end of December each year, HS2 Ltd shall notify the SoS of any variations and additions it requires to the Accepted Programme and the Transitional Programme, including an explanation in writing of the reasons for such variation.

7.2 By no later than end of February each year, SoS shall notify HS2 Ltd confirming whether the variations and/or additions requested by HS2 Ltd have been included in the additional and/or amended Accepted Programme Specific Requirements and

Transitional Programme Specific Requirements provided by the SoS to the WCP Franchisee in accordance with paragraph 4.2 of schedule 18.4 (Annual Review) of the Franchise Agreement.

- 7.3 Notwithstanding paragraph 7.1, and 7.2, HS2 Ltd may at any time submit to the SoS a request for an addition or amendment to the Accepted Programme if such addition or amendment takes effect before the end of April following such notification, or HS2 Ltd has such other reason for requiring confirmation of such amendment before completion of the next Shadow Operator Annual Review under the Franchise Agreement.
- 7.4 HS2 Ltd shall, pursuant to paragraphs 7.1 and 7.3 provide such further information the SoS reasonably requires to enable the SoS to consider such variations and/or additions to the Accepted Programme and/or Transitional Programme.

Non HS2 Ltd proposed amendments to the Accepted Programme and/or the Transitional Programme

- 7.5 The SoS shall consult with HS2 Ltd for a reasonable period of time in respect of the HS2 Related Aspects of any:
- 7.5.1 draft (or varied) Accepted Programme or Transitional Programme proposed by the WCP Franchisee pursuant to paragraph 4 of schedule 18.4 (Annual Review) or schedule 9.3B (Variations to the Franchise Agreement) of the Franchise Agreement; and
- 7.5.2 proposed amendments to the Franchise Agreement.

HS2 Ltd shall promptly provide its comments in respect of any such matter and, in any event, within timescales that will enable the SoS to comply with his/her obligations in the Franchise Agreement.

- 7.6 If the SoS fails to take into account any comments made by HS2 Ltd pursuant to paragraph 7.5, where and to the extent that such comments demonstrate that any draft (or varied) Accepted Programme or Transitional Programme provided to it by the SoS pursuant to paragraph 7.5 is inconsistent with, or would have an adverse impact upon, the Baseline Delivery Schedule, HS2 Ltd may propose a HS2 notice of Change in accordance with paragraph 3.5 of Annex 7 (Instruction and Change Procedures).
- 7.7 The SoS shall promptly provide to HS2 Ltd a copy of any draft updated Accepted Programme and/or Transitional Programme received by it pursuant to, or agreed in accordance with, paragraph 4 of schedule 18.4 (Annual Review) and/or schedule 9.3B (Variations to the Franchise Agreement) of the Franchise Agreement.

8. WCP Franchisee co-operation with HS2 Ltd

- 8.1 HS2 Ltd shall discuss and seek to agree with the WCP Franchisee the Required WCP Franchisee Co-operation.
- 8.2 If HS2 Ltd is unable to agree with the WCP Franchisee as to the Required WCP Franchisee Co-operation, HS2 Ltd shall promptly notify the SoS. In this event, the SoS may reasonably determine the Required WCP Franchisee Co-operation, and HS2 Ltd shall accept that determination.

8.3 If the WCP Franchisee fails to provide to HS2 Ltd the Required WCP Franchisee Co-operation agreed or determined in accordance with paragraph 8.1 or 8.2, HS2 Ltd shall promptly notify the SoS.

9. **Internal governance**

9.1 The Parties acknowledge that the Category 1 Body (as defined in the Collaboration Agreement) constitutes part of the overall governance structure of HS2 Ltd, which may be amended from time to time. HS2 Ltd shall consult with the WCP Franchisee prior to making any amendment to the governance structure of HS2 Ltd that is reasonably likely to affect the WCP Franchisee or the Category 1 Body (as defined in the Collaboration Agreement).

9.2 HS2 Ltd shall participate in all Franchise Review meetings provided for in paragraph 16 of schedule 18.1 (Shadow Operator Performance Meetings) of the Franchise Agreement.

9.3 HS2 Ltd shall respond, in accordance with the required timescales, to the WCP Stakeholder Survey undertaken in accordance with paragraph 15 of schedule 18.1 (Shadow Operator Stakeholder Survey) of the Franchise Agreement.

10. **Following contract award of High Speed Rolling Stock**

10.1 Promptly following contract award of the High Speed Rolling Stock, HS2 Ltd shall discuss and seek to agree with the WCP Franchisee, within 30 days following the WCP Shadow Operator Start Date, the scope and nature of the WCP Franchisee's input into HS2 Ltd's procurement of the High Speed Rolling Stock.

10.2 HS2 Ltd agrees that within 30 days of the rolling stock contracts being executed, it shall facilitate WCP Franchisee undertaking the role as Operator's Representative (as defined in the High Speed Rolling Stock MSA), including the functions imposed on the WCP Franchisee in paragraphs 26, 27, 28, 29, 30, 32 and 33 of schedule 18.2 (Accepted Programme Specific Requirements) of the Franchise Agreement.

10.3 HS2 Ltd shall not delegate to the WCP Franchisee, in its capacity as Operator's Representative (as defined in the High Speed Rolling Stock MSA), any responsibilities other than those referred to above without the prior consent of the SoS.

10.4 Following contract award of the High Speed Rolling Stock, if HS2 Ltd requires the WCP Franchisee to participate and/or provide resources for Testing and Commissioning (as defined in paragraph 31 of schedule 18.2 (Accepted Programme Specific Requirements) of the Franchise Agreement), it shall specify to the WCP Franchisee the associated resource requirements by the date reasonably notified by the WCP Franchisee.

10.5 HS2 Ltd shall enforce against the TMM all warranties and indemnities which it benefits from in the High Speed Rolling Stock MSA, to the extent it considers appropriate or if requested by the SoS, or if reasonably requested by the WCP Franchisee.

10.6 HS2 Ltd shall exercise its right to purchase additional spares and/or special tools in respect of the High Speed Rolling Stock at the direction of the SoS if reasonably required by the WCP Franchisee to perform the High Speed Services. The SoS shall

have the final determination as to whether any additional spares or special tools are purchased and, if so, as to quantities of the same to be purchased.

11. **Leases**

- 11.1 HS2 Ltd shall consult with the SoS and with the WCP Franchisee on the form of the High Speed Rolling Stock Lease.
- 11.2 HS2 Ltd shall enforce all of its rights in the High Speed Rolling Stock Lease where it is reasonable to do so.
- 11.3 As notified by the SoS, HS2 Ltd shall enter into the High Speed Rolling Stock TSA Novation and shall procure that the TMM enters into all such documents necessary to give effect to the High Speed Rolling Stock TSA Novation.
- 11.4 As notified by the SoS, HS2 Ltd shall enter into a deed of novation in respect of the lease of the Home Depot in order to transfer the same to the WCP Franchisee to enable it to become the owner of the Home Depot.

12. **Functional Requirements**

If Functional Requirements are provided to HS2 Ltd by the WCP Franchisee in accordance with schedule 18.2 (Accepted Programme Specific Requirements) of the Franchise Agreement, HS2 Ltd shall discuss and agree with the WCP Franchisee:

- 12.1 the scope and form of the relevant Functional Requirement;
- 12.2 the cost and funding relating to the relevant Functional Requirement; and
- 12.3 if applicable, a recommendation as to whether the relevant Functional Requirement Asset should be vested in HS2 Ltd, the WCP Franchisee or a third party and, if a third party, identifying such third party,

in each case in compliance with any instructions, administrative practices, guidance, policies, measures or publications advised by the SoS.

13. **Functional Requirement Assets**

- 13.1 When procuring any assets which constitute Functional Requirement Assets, HS2 Ltd shall:
 - 13.1.1. consult with the WCP Franchisee reasonably promptly after commencing the same, and reasonably frequently throughout the process of each such procurement;
 - 13.1.2. seek to obtain the WCP Franchisee's confirmation that the relevant asset is reasonably likely to meet the related Functional Requirement Acceptance Criteria. If the WCP Franchisee does not provide such confirmation, HS2 Ltd shall seek to remedy any concerns outlined by the WCP Franchisee and, if such confirmation thereafter remains outstanding, notify the SoS before it concludes its procurement of the relevant asset; and
 - 13.1.3. explain to (and obtain consent from in respect of) each bidder the requirements set out in this paragraph 13.1 relating to entry into direct

agreements, transfers of the relevant Functional Requirement Asset to the WCP Franchisee at the appropriate time and the need to audit the standard of maintenance of such assets immediately prior to each such transfer.

13.2 If the SoS notifies HS2 Ltd that any Functional Requirement Asset should be vested in the WCP Franchisee, HS2 Ltd shall:

13.2.1 transfer such asset to the WCP Franchisee at nil value in accordance with the timetable specified by the SoS and its general obligations set out at Clause 30;

13.2.2 transfer any agreements relating to such assets by way of novation on the terms specified in the form of novation agreement set out at appendix 1 to schedule 18.2 of the Franchise Agreement (unless otherwise agreed by the SoS); and

13.2.3 provide a warranty to the WCP Franchisee that:

(a) (except to the extent that any Functional Requirement Asset is already the subject of an equivalent warranty, the benefit of which has been transferred pursuant to paragraph 13.2.2) each relevant Functional Requirement Asset has been maintained to a reasonable standard of operation; and

(b) it shall, prior to the date of transfer, enforce any rights it has under any related maintenance contracts to ensure that the relevant asset is, if relevant, repaired and brought up to a reasonable standard of maintenance and operation.

14. **No direct proceedings between HS2 Ltd and WCP Franchisee**

14.1 Subject to paragraph 14.4, HS2 Ltd shall not (and shall procure that its contractors, sub-contractors and Affiliates shall not) bring any proceedings, claims or demands against the WCP Franchisee (whether in contract, tort (including negligence) or otherwise) arising out of or in relation to the Shadow Operator Services (including any Shadow Operator Delay Event).

14.2 Subject to paragraph 14.4, the SoS shall procure that the WCP Franchisee (and the contractors, sub-contractors and Affiliates of the WCP Franchisee) shall not bring any proceedings, claims or demands (whether in contract, tort (including negligence) or otherwise) against HS2 Ltd arising out of or in relation to HS2 Ltd's performance of its rights and obligations under this Agreement.

14.3 The SoS, on demand, shall hold HS2 Ltd fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on HS2 Ltd out of or in relation to any failure by the SoS to comply with paragraph 14.2.

14.4 The provisions of paragraphs 14.1 and 14.2 do not prevent HS2 Ltd or the WCP Franchisee from bringing claims under:

14.4.1 the Track Access Agreement; or

14.4.2 any other contract between HS2 Ltd and the WCP Franchisee, provided that such contract has not been entered into with the aim of avoiding the restrictions set out in paragraphs 14.1 and/or 14.2.

15. **Shadow Operator Annual Review**

HS2 Ltd shall provide comments to the SoS, within a period of two months following request, on the performance of the WCP Franchisee in delivering the Shadow Operator Services in respect of the most recently completed Shadow Operator Performance Period, for the purposes of the SoS's Shadow Operator Annual Review pursuant to schedule 18.4 of the Franchise Agreement.

16. **TUPE Indemnity**

"Industrial Action" means any concerted action taken in connection with the employment of any employees of HS2 Ltd (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial industrial action, to HS2 Ltd being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of the SoS and the WCP Franchisee;

"HS2 TUPE Employees" means all persons employed in the performance of the HS2 Services immediately before the HS2 TUPE Transfer Date (whether employed by the WCP Franchisee or otherwise) whose contract of employment has been or is to be transferred to the WCP Franchisee by virtue of the operation of law (including the Transfer Regulations) or any other person employed at any time in the performance of the HS2 Services in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of law (including the Transfer Regulations);

16.1 For the purposes of this paragraph 16, "Taxation" shall mean "comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the WCP Franchisee) all penalties and interest relating thereto." The Parties accept that, to the extent that services similar or equivalent to those provided by HS2 Ltd ("**HS2 Services**") are continued by the WCP Franchisee after the date on which HS2 Services terminate ("**HS2 TUPE Transfer Date**"), the transfer which is effected by the SoS is governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

16.1.1 the contract of employment of each of the HS2 TUPE Employees (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) shall be transferred to the WCP Franchisee with effect from the HS2 TUPE Transfer Date which shall be the "time of transfer" under the Transfer Regulations and the SoS shall procure that the WCP Franchisee shall employ each such HS2 TUPE Employee on the terms of those contracts of employment (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) with effect from the HS2 TUPE Transfer Date;

- 16.1.2 HS2 Ltd shall perform and discharge all its obligations in respect of all the HS2 TUPE Employees for its own account up to and including the HS2 TUPE Transfer Date including, without limitation, discharging all wages and salaries of the HS2 TUPE Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the HS2 TUPE Transfer Date) and shall indemnify the SoS and the WCP Franchisee and keep the SoS and the WCP Franchisee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from HS2 Ltd's failure so to discharge;
- 16.1.3 HS2 Ltd shall indemnify the SoS and the WCP Franchisee and keep the SoS and the WCP Franchisee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by HS2 Ltd or any other event or occurrence prior to the HS2 TUPE Transfer Date and which the SoS and the WCP Franchisee may incur in relation to any contract of employment or collective agreement concerning one or more of the HS2 TUPE Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:
- (a) HS2 Ltd's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the WCP Franchisee in accordance with the Transfer Regulations; or
 - (b) anything done or omitted before the HS2 TUPE Transfer Date by or in relation to HS2 Ltd in respect of any such contract of employment or collective agreement or any HS2 TUPE Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the WCP Franchisee save where the thing done or omitted to be done before the HS2 TUPE Transfer Date relates to the WCP Franchisee's failure to comply with its obligations;
- 16.1.4 if any contract of employment or collective agreement which is not disclosed in writing to the Franchisee by HS2 Ltd prior to the HS2 TUPE Transfer Date and it shall have effect as if originally made between the Franchisee and any employee (the "**Undisclosed HS2 TUPE Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to HS2 Ltd):
- (a) the WCP Franchisee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith; and

- (b) HS2 Ltd shall indemnify the SoS and the WCP Franchisee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the SoS and the WCP Franchisee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his employment following the HS2 TUPE Transfer Date; and
- (c) HS2 Ltd shall indemnify the SoS and the WCP Franchisee in respect of any Undisclosed HS2 TUPE Employee on the same terms mutatis mutandis as HS2 Ltd has indemnified the SoS and the WCP Franchisee in respect of a HS2 TUPE Employee pursuant to the terms of paragraphs 16.1.2 and 16.1.3; and
- (d) HS2 Ltd shall indemnify the SoS and the WCP Franchisee and keep the SoS and the WCP Franchisee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by HS2 Ltd of any employee (not being a HS2 TUPE Employee) and which the SoS and the WCP Franchisee may incur pursuant to the provisions of the Transfer Regulations.

16.2 The SoS shall procure that the WCP Franchisee shall indemnify HS2 Ltd and keep HS2 Ltd indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

- 16.2.1 any substantial change in the working conditions of the HS2 TUPE Employees to his or her detriment or any of them occurring on or after the HS2 TUPE Transfer Date;
- 16.2.2 the change of employer occurring by virtue of the Transfer Regulations and/or the Franchise Agreement being significant and detrimental to any of the HS2 TUPE Employees;
- 16.2.3 the employment by the WCP Franchisee on or after the HS2 TUPE Transfer Date of any of the HS2 TUPE Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the HS2 TUPE Transfer Date or the termination of the employment of any of them on or after the HS2 TUPE Transfer Date; or
- 16.2.4 any claim by any HS2 TUPE Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race

discrimination) as a result of any act or omission by the WCP Franchisee after the HS2 TUPE Transfer Date.

- 16.3 The SoS shall procure that the WCP Franchisee shall indemnify HS2 Ltd and keep HS2 Ltd indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, HS2 Ltd in writing with such information and at such time as will enable HS2 Ltd to carry out its duties under Regulation 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the WCP Franchisee in relation to the HS2 TUPE Employees.
- 16.4 Without prejudice to HS2 Ltd's duties under the Transfer Regulations, HS2 Ltd warrants to the SoS and the WCP Franchisee that it will provide the WCP Franchisee, at least 28 days prior to the HS2 TUPE Transfer Date, with full particulars of:
- 16.4.1 each HS2 TUPE Employee, including name, sex, and the date on which continuity of employment began for each HS2 TUPE Employee for statutory purposes;
 - 16.4.2 terms and conditions of employment of each such person;
 - 16.4.3 all payments, benefits or changes to terms and conditions of employment promised to any such person;
 - 16.4.4 dismissals of HS2 TUPE Employees or termination of employment effected within twelve (12) months prior to the HS2 TUPE Transfer Date including the HS2 TUPE Transfer Date;
 - 16.4.5 all agreements or arrangements entered into in relation to the HS2 TUPE Employees between HS2 Ltd, any Affiliate of HS2 Ltd or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
 - 16.4.6 all strikes or other Industrial Action taken by any HS2 TUPE Employee within twelve (12) months prior to the HS2 TUPE Transfer Date including the HS2 TUPE Transfer Date.
- 16.5 HS2 Ltd shall, and the SoS shall procure that the WCP Franchisee shall, deliver to each of the HS2 TUPE Employees letters in an agreed form from HS2 Ltd and the WCP Franchisee as soon as is practicable.