



HERBERT
SMITH
FREEHILLS

5 July
..... 2022

THE SECRETARY OF STATE FOR TRANSPORT
and
HS1 LIMITED

SUPPLEMENTAL AGREEMENT
amending and restating the
CONCESSION AGREEMENT
for the design, construction, financing,
operation, repair and maintenance of High
Speed 1 dated 14 August 2009 as amended
and restated on 16 July 2010, 27 March 2015
and 18 December 2017

Herbert Smith Freehills LLP

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THIS SUPPLEMENTAL AGREEMENT is delivered as a deed on 5 July 2022

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT** of Great Minster House, 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**") and
 - (2) **HS1 LIMITED** whose registered office is at 5th Floor, Kings Place, 90 York Way, London, England, N1 9AG (Co. Regn. No. 03539665) (the "**HS1 Co**"),
- each a "**Party**" and together the "**Parties**".

IT IS AGREED as follows:

1. **RECITALS**

- (A) The Parties have entered into the S1 Agreement dated 28 September 2003 and the S2 Agreement dated 6 August 2008, each of which were amended and restated in a single concession agreement dated 14 August 2009 for the design, construction, financing, operation, repair and maintenance of High Speed 1. By way of supplemental agreements, the concession agreement was further amended on 16 July 2010, 27 March 2015 and 18 December 2017 (such agreement as amended being the "**Original Agreement**").
- (B) The Parties have now resolved, having received the consent of the ORR, to amend the Original Agreement to reflect and to give effect to the transfer of certain functions from the Government's Representative to the ORR under the HS1 Lease and the Ashford Deed by entering into this Deed in accordance with clause 19 of the Original Agreement.

2. **DEFINITIONS AND INTERPRETATION**

2.1 **Definitions**

Terms defined in the Original Agreement shall, unless otherwise defined in this Deed or a contrary intention appears, bear the same meaning when used in this Deed and the following terms shall have the following meanings:

"**Amendment Date**" means 27 July 2022;

"**Amended and Restated Agreement**" means the Original Agreement as amended and restated in accordance with this Deed in the form set out in Schedule 1 (Amended and Restated Agreement);

"**Ashford Deed**" has the meaning given to it in the Amended and Restated Agreement;

"**Deed**" means this supplemental agreement to the Original Agreement; and

"**Original Agreement**" has the meaning ascribed to it in Recital (A).

2.2 **Interpretation**

The provisions of Section 2 (*Construction and Interpretation*) of Schedule 1 of the Original Agreement shall also apply to this Deed but references to Clauses and Schedules are to clauses and schedules of this Deed unless otherwise specified.

3. **AMENDMENT AND RESTATEMENT**

- 3.1 The Original Agreement shall be amended and restated with effect from (and including) the Amendment Date so that it reads as if it were restated in the form set out in Schedule 1 (*Amended and Restated Agreement*) and so that the rights and obligations of the Parties relating to their performance under the Original Agreement from (and including) the

Amendment Date shall be governed by, and construed in accordance with, the terms of the Amended and Restated Agreement.

- 3.2 The Parties agree that, with effect from (and including) the Amendment Date, they shall have the rights and take on the obligations ascribed to them under the Amended and Restated Agreement.

4. **CONTINUATION**

- 4.1 This Deed is supplemental to, and shall be construed as one with, the Original Agreement.

- 4.2 Except as varied by the terms of this Deed, the Original Agreement will remain in full force and effect and any reference in the Original Agreement to the Original Agreement or to any provision of the Original Agreement will be construed as a reference to the Original Agreement, or that provision, as amended and restated by this Deed.

5. **FURTHER ASSURANCE**

The Parties shall do all such things necessary and desirable in order to confirm or establish the validity and enforceability of this Deed.

6. **COSTS**

The Parties shall pay their own costs in connection with the preparation, negotiation and execution of this Deed and any matter contemplated by it.

7. **MISCELLANEOUS**

- 7.1 The provisions of clauses 19 (*Amendments*), 21 (*Entire Agreement*), 22 (*Notices*), 23 (*Settlement of Disputes*) and 25 (*Miscellaneous*) of the Original Agreement shall apply to this Deed as though those clauses were set out in this Deed, but as if references in those clauses to the Original Agreement were references to this Deed.

- 7.2 This Deed (together with the documents referred to herein) constitutes the entire and only agreement between the Parties in relation to the subject matter herein or therein.

- 7.3 This Deed may only be varied in writing signed by each of the Parties.

- 7.4 This Deed may be executed in any number of counterparts and by the Parties to it in separate counterparts, each of which when so executed and delivered shall be an original, but all counterparts shall together constitute one and the same instrument.

8. **GOVERNING LAW**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

IN WITNESS whereof this DEED has been duly executed by the Parties hereto (or their duly authorised representatives) and is intended to be and is hereby delivered on the date first above written.

EM-1

The Corporate Seal of the)
SECRETARY OF STATE FOR)
TRANSPORT)
hereunto affixed is)
authenticated by)



A handwritten signature in blue ink, appearing to read 'Robert B. Miller', written over a dotted line.

Authorised by the Secretary of State
for Transport

EXECUTED AS A DEED by)
HS1 LIMITED)
acting by)

as its duly authorised attorney

in the presence of

.....

Name:

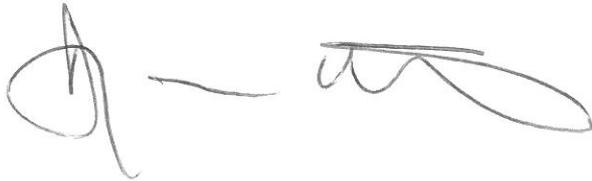
Address:

IN WITNESS whereof this DEED has been duly executed by the Parties hereto (or their duly authorised representatives) and is intended to be and is hereby delivered on the date first above written.

The Corporate Seal of the)
SECRETARY OF STATE FOR)
TRANSPORT)
hereunto affixed is)
authenticated by)

.....
Authorised by the Secretary of State
for Transport

EXECUTED AS A DEED by)
HS1 LIMITED)
acting by *Dylan Crowther*)
as its duly authorised attorney



in the presence of



Name: **CHLOE BARTON**
Address: **5TH FLOOR, KING'S PLACE**
90 YORK WAY
LONDON
N1 9AG

SCHEDULE 1
(AMENDED AND RESTATED AGREEMENT)

Dated 14 August 2009 and amended and restated on 16 July 2010 and further amended and restated on 27 March 2015, 18 December 2017 and 5 July 2022

THE SECRETARY OF STATE FOR TRANSPORT

and

HS1 LIMITED

CONCESSION AGREEMENT

for the design, construction, financing, operation, repair and maintenance of High Speed 1

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THIS CONCESSION AGREEMENT dated 14 August 2009 and as amended and restated on 16 July 2010 and further amended and restated on 27 March 2015, 18 December 2017 and 5 July 2022 is made **BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR TRANSPORT** (the "**Secretary of State**") of Great Minster House, 33 Horseferry Road, London SW1P 4DR; and
- (2) **HS1 LIMITED** ("**HS1 Co**") a company registered and incorporated in accordance with the laws of England and Wales registered under number 3539665 and having its registered office at 5th Floor, Kings Place, 90 York Way, London, N1 9AG.

WHEREAS:

1. The Government of the United Kingdom has adopted a policy of encouraging private sector participation in infrastructure projects and in the development of the nation's transport system.
2. On 28 February 1996 the Secretary of State entered into a development agreement with London & Continental Railways Limited ("**LCR**") for the design, construction, financing, operation, repair and maintenance of the proposed rail link between St Pancras in the London Borough of Camden and Cheriton in Kent known as the new Channel Tunnel rail link ("**CTRL**"). The development agreement was subsequently amended by the first to the tenth supplemental agreements (together the "**LCR Development Agreement**").
3. The CTRL was built in two sections, Section 1 from Cheriton in Kent to Fawkham Junction and Section 2 from Southfleet to London St Pancras Station.
4. By virtue of a concession agreement known as the S1 Agreement dated 28 September 2003 (the "**S1 Agreement**") between the Secretary of State and Union Railways (South) Limited ("**URS**") the rights and obligations of LCR under the LCR Development Agreement in relation to Section 1 were acquired by and conferred upon URS. The S1 Agreement is now vested in HS1 Co.
5. By virtue of a concession agreement known as the S2 Agreement dated 6 August 2008 (the "**S2 Agreement**") between the Secretary of State and Union Railways (North) Limited ("**URN**") the rights and obligations of LCR under the LCR Development Agreement in relation to Section 2 were acquired by and conferred upon URN. URN has changed its name to HS1 Limited.
6. The S1 Agreement and the S2 Agreement were amended and restated in a single concession agreement dated 14 August 2009 between the Secretary of State and HS1 Co.
7. The Final Permit to Use for CTRL was issued on 27 May 2008 and the CTRL is now known as High Speed 1 or HS1.
8. HS1 Co is the infrastructure manager of HS1 for the purposes of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 ("**Railways Regulations**").
9. Under Regulation 15 (8) of the Railways Regulations the Office of Rail and Road is responsible for exercising its rights and responsibilities under or by virtue of the relevant development agreement (for the purposes of Section 56 of the CTRL Act 1996 and the Railways Regulations) to ensure that the requirements of Regulation 15 (7) are implemented.
10. This Agreement is a development agreement for the purposes of Section 56 of the CTRL Act 1996 and the Railways Regulations.
11. This Agreement provides for the Office of Rail and Road to undertake a number of responsibilities, including monitoring and enforcing asset stewardship and conducting periodic and interim reviews in accordance with Regulation 15(8) of the Railways Regulations.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretation

1.1 Definitions and Interpretation

The definitions set out in Section 1 [Definitions] of Schedule 1 and the provisions relating to construction and interpretation of this Agreement set out in Section 2 [Construction and Interpretation] of Schedule 1 shall apply to this Agreement except where the context otherwise requires.

1.2 Framework Agreement

The provisions of the Framework Agreement shall not apply to this Agreement.

2. Concession, Term and Directives

2.1 Grant and Term of Concession

2.1.1 The Secretary of State confirms the grant of the HS1 Concession to HS1 Co, upon the terms and subject to the conditions set out in this Agreement.

2.1.2 The HS1 Concession will terminate on the Expiry Date, unless terminated earlier pursuant to the provisions of Clauses 13 or 14 or by agreement of the parties.

2.2 Legislation

HS1 Co shall take all steps reasonably necessary and within its power to enable it and the Secretary of State to comply with any or all of the CTRL Act, and any Directive relating to HS1, the HS1 Concession, the HS1 Assets or the Ashford Assets.

3. Consents and Public Sector Support

3.1 Undertakings, Consents and Authorisations

3.1.1 To the extent that the same have not been granted by the date of this Agreement and save insofar as licences, consents and authorisations are granted by the CTRL Act, HS1 Co shall use all reasonable endeavours to obtain (and the Secretary of State subject to his constitutional and other duties will give all appropriate encouragement to enable HS1 Co to obtain) all licences, consents or other authorisations required to enable it to carry out the Maintenance Works in the manner and within the time limits contained in this Agreement.

3.1.2 HS1 Co shall comply with and, where required to do so by the Secretary of State, shall at such time and within such period as may be reasonably required by the Secretary of State execute and deliver deeds, memoranda and agreements on planning, heritage and related matters, in the form reasonably required by the Secretary of State, including but not limited to those referred to in Part 1 of Schedule 9 [Undertakings and Assurances].

3.1.3 Subject to Clause 3.1.4, HS1 Co shall comply with all undertakings and assurances concerning HS1, the HS1 Concession or the HS1 Assets specified in Part 2 of Schedule 9 [Undertakings and Assurances] and, without prejudice to the foregoing, shall at such time and within such period as may be specified in any such undertaking or assurance or as may otherwise be reasonably required by the Secretary of State execute and deliver to the relevant party the deeds or agreements required by those undertakings or assurances and in the form required by the relevant undertaking or

assurance or, if no such form is provided for, then in the form reasonably required by the Secretary of State.

3.1.4 Notwithstanding Clause 3.1.3, where HS1 Co has agreed with the beneficial recipient or recipients, as the case may be, of an undertaking or assurance referred to in Clause 3.1.3 to amend, change, waive or in any way alter the terms of that undertaking or assurance in a manner acceptable to the Secretary of State, HS1 Co shall notify, if relevant, the ORR and the local authority of the geographical area to which the undertaking or assurance relates of the new agreed terms of that undertaking or assurance, and shall comply with the new agreed terms of that undertaking or assurance but nothing in this Clause 3.1.4 shall be construed as authorising HS1 Co to amend, change, waive or in any way alter the terms of an undertaking given by the Secretary of State to Parliament.

3.2 Change of Nominated Undertaker

The Secretary of State shall not make an order or take any other step for an entity to be appointed the nominated undertaker except:

3.2.1 at the written request of HS1 Co;

3.2.2 where the Secretary of State has exercised his rights under Clause 13 [Termination by the Secretary of State] to terminate this Agreement; or

3.2.3 where HS1 Co has exercised its rights under Clause 14 [Termination by HS1 Co] and has terminated this Agreement.

3.3 No Subsidy

Before 31 December 2030 the Secretary of State undertakes not to support any application for financial or other assistance in relation to an existing railway line between the geographical area presently bounded by the M25 orbital motorway and the Channel Tunnel which might allow that line to be used to provide a line speed in excess of 200 kilometres per hour.

4. Government's Representative and ORR

4.1 Government's Representative

The Secretary of State may appoint, from time to time after giving prior notice to HS1 Co, the Government's Representative (or more than one) to be his representative (or representatives) in relation to the HS1 Concession and in relation to the obligations of HS1 Co as a network provider of HS1. Without limiting the Secretary of State's obligations in respect of such matters, HS1 Co agrees that each Government's Representative shall carry out or exercise in respect of this Agreement such of the functions, duties, rights and obligations of the Secretary of State under this Agreement as the Secretary of State may notify to HS1 Co from time to time. The Secretary of State shall give to HS1 Co notice of his intention to change the Government's Representative (or any of them), of the identity of the Government's Representative (and if more than one then of each of them), and of the date upon which that change shall have effect.

4.2 ORR

It is acknowledged and agreed that in accordance with Regulation 15(8) of the Railways Regulations, the ORR shall be appointed on the basis set out in Schedule 11 [Memorandum of Understanding] to be responsible for carrying out or exercising such functions, responsibilities, rights and obligations in relation to the following Clauses or Schedules (and, unless the context otherwise requires, no others) as are indicated in those Clauses or Schedules to be functions, responsibilities, rights or obligations to be carried out or exercised by the ORR:

from the date of this Agreement:

- 4.2.1 Clause 3.1.4 [Undertakings, Consents and Authorisations];
- 4.2.2 Clause 4.3 [Changes to the ORR's Appointment];
- 4.2.3 Clause 4.4 [ORR's Fees];
- 4.2.4 Clause 5.1 [Minimum Operational Standards];
- 4.2.5 Clause 7.2 [HS1 Railway Infrastructure];
- 4.2.6 Clauses 10.2.3-10.2.7 [Paragraph 2 Changes];
- 4.2.7 Clauses 11.1 and 11.2 [Records and Accounts];
- 4.2.8 Clause 18.6 [Confidentiality]
- 4.2.9 Clause 19 [Amendments];
- 4.2.10 Clause 22 [Notices];
- 4.2.11 Clause 23 [Settlement of Disputes];
- 4.2.12 Clause 25.2 [No Third Party Beneficiary];
- 4.2.13 Schedule 3 [Minimum Operational Standards];
- 4.2.14 Schedule 6 [Records and Accounts]
- 4.2.15 Schedule 8 [Decision Making and Enforcement Procedures];
- 4.2.16 Schedule 10 [Asset Stewardship and Periodic Review]; and

from the Variation Date, as defined under the HS1 Lease:

- 4.2.17 (1) Clause 8 (Additional Provisions), Schedule 10 (Provisions relating to Station Repair and Renewal) and Schedule 11 (Stations Enforcement Procedure) of the HS1 Lease and (2) the Ashford Deed.

4.3 Changes to the ORR's Appointment

The Secretary of State shall not make, or agree to make, any change to the ORR's Appointment without the prior written consent of HS1 Co (such consent not to be unreasonably withheld or delayed).

4.4 ORR's Fees

- 4.4.1 Subject to clause 4.4.2, HS1 Co acknowledges and agrees that it shall be responsible under section 21A of the CTRL Act for the payment of the ORR's reasonable fees charged and any reasonable costs, expenses, disbursements or other liabilities incurred by the ORR in the performance of its functions, duties, rights and obligations under this Agreement and the Railways Regulations, insofar as such amounts are levied in accordance with section 21A of the CTRL Act.
- 4.4.2 HS1 Co shall not be responsible for any fees, costs, expenses, disbursements or other liabilities incurred by the ORR in relation to the performance by the ORR of its functions, duties, rights and obligations in respect of Clause 4.2.17. It is acknowledged

and agreed by the parties that such amount of the ORR's reasonable fees charged and any reasonable costs, expenses, disbursements or other liabilities incurred by the ORR as shall relate to the performance by the ORR of its functions, duties, rights and obligations in respect of Clause 4.2.17 shall be payable by the Secretary of State and not HS1 Co.

4.5 Investment Recovery Charge

It is acknowledged and agreed by the parties that nothing in this Agreement shall be taken to confer upon the ORR any function in relation to agreeing or determining the level of any investment recovery charges to be levied by HS1 Co pursuant to paragraphs 3.1.1 to 3.1.2 of Schedule 4 [Charging Framework] except as set out in paragraph 2.9 of Schedule 2 [Change in Circumstances] and paragraph 11 of Schedule 10 [Specified Upgrades].

4.6 Section 4 of the Railways Act 1993

It is acknowledged and agreed by the parties that when the ORR is exercising its rights and responsibilities under or by virtue of this Agreement, including where it is required to make determinations under Schedule 10 [Asset Stewardship and Periodic Review], Section 4 of the Railways Act 1993 has effect in accordance with Regulation 31(1) of the Railways Regulations.

5. Minimum Operational Standards

5.1 Minimum Operational Standards

HS1 Co shall comply with the Minimum Operational Standards and the provisions of Schedule 3 [Minimum Operational Standards] shall have effect.

5.2 Ebbsfleet Development Agreement

5.2.1 HS1 Co shall not without the prior written consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, agree or implement any variation, modification or amendment to the Ebbsfleet Development Agreement and shall procure that any other party to whom the Ebbsfleet Development Agreement is novated shall enter into a direct agreement with and on terms reasonably required by the Secretary of State to this effect.

5.2.2 HS1 Co shall procure that if during the life of the Ebbsfleet Master Agreement and the Ebbsfleet Development Agreement a third party has the right, as against the Secretary of State or HS1 Co, to assume the obligations of HS1 Co, either permanently or for a restricted period of time, in relation to the operation of either or both HS1 and the international passenger station at Ebbsfleet and exercises that right, then such third party shall covenant with BCP in the like manner and to the like extent to observe and perform the obligations of HS1 Co pursuant to the Ebbsfleet Development Agreement.

6. Access Charges

6.1 Charging Framework

The provisions of Schedule 4 [Charging Framework] shall have effect.

7. Asset Stewardship

7.1 HS1 Assets (excluding the HS1 Railway Infrastructure, the HS1 Stations and Temple Mills Depot) and Ashford Assets (excluding Ashford International Station).

Until the Expiry Date or the earlier termination of this Agreement, and without prejudice to any obligations HS1 Co may have under statute or at common law, HS1 Co shall:

- 7.1.1 operate, repair and maintain or procure the operation, repair and maintenance of (by applying the principles of preventative maintenance in so far as they apply to those assets in accordance with Best Practice) and keep or procure the keeping of the HS1 Assets (excluding the HS1 Railway Infrastructure, the HS1 Stations and Temple Mills Depot) and the Ashford Assets (excluding Ashford International Station) in good order and condition and so as to meet all relevant safety requirements and so that, to the greatest extent possible and practical:
 - 7.1.1.1 HS1 Co is able to perform its obligations under the HS1 Concession; and
 - 7.1.1.2 on the termination or expiry of this Agreement, pursuant to Clause 15 [Effect of Termination or Expiry of HS1 Concession], the Secretary of State or the Secretary of State's nominee will be able to take over the business of providing the operation, repair and maintenance of HS1 pursuant to this Agreement immediately at any time;
- 7.1.2 maintain and manage the business of providing the operation, repair and maintenance of the HS1 Assets (excluding the HS1 Railway Infrastructure, the HS1 Stations and Temple Mills Depot) and the Ashford Assets (excluding Ashford International Station) pursuant to the HS1 Concession on the basis that such business can be transferred in the manner contemplated under this Agreement as a going concern on the expiry or termination of the HS1 Concession to, and continued immediately thereafter by, the Secretary of State or the Secretary of State's nominee; and
- 7.1.3 (both prior to and following the expiry or termination of the HS1 Concession) co-operate with and take such steps as may be reasonably requested by the Secretary of State so as to ensure the continuity of, and an orderly handover of control over, the operation, repair and maintenance of the HS1 Assets (excluding the HS1 Railway Infrastructure, the HS1 Stations and Temple Mills Depot) and the Ashford Assets (excluding Ashford International Station) pursuant to this Agreement.

7.2 HS1 Railway Infrastructure

The provisions of Schedule 10 [Asset Stewardship and Periodic Review] shall have effect and HS1 Co shall carry out asset stewardship with respect to the HS1 Railway Infrastructure in accordance with the provisions of that Schedule.

7.3 HS1 Stations, Temple Mills Depot and Ashford International Station

It is acknowledged and agreed that the operation, repair and maintenance (and the related costs thereof):

- 7.3.1 of the HS1 Stations is provided for in the HS1 Lease and the Ebbsfleet Underlease;
- 7.3.2 of Temple Mills Depot is provided for in the HS1 Lease; and
- 7.3.3 of Ashford International Station is provided for in the Ashford Leases.

8. Liability

8.1 HS1 Co's Liability and Indemnity in Favour of Secretary of State

- 8.1.1 Subject as herein provided as between HS1 Co and the Secretary of State, HS1 Co will not be entitled to any recourse to the Secretary of State in respect of any liability which would otherwise have fallen to be borne by the Secretary of State for any damage or Losses suffered by users of HS1 or by any other third parties in each case arising out of or in connection with a breach by HS1 Co of the obligations under this Agreement, the Agreement for Lease or, after they come into force, the HS1 Lease,

the Ebbsfleet Underlease or the Ashford Leases save only and to the extent that the same arises out of any wilful misconduct or Gross Negligence of the Secretary of State, his servants or agents.

- 8.1.2 Subject to Clause 8.3, HS1 Co shall indemnify and keep indemnified the Secretary of State in respect of all claims made by third parties whether contingent, prospective or actual against, and all Losses reasonably incurred by, the Secretary of State in respect of any liability referred to in Clause 8.1.1, which have been notified to HS1 Co in accordance with Clause 8.2, save to the extent that any such claims or Losses arise wholly or partly out of any wilful misconduct or Gross Negligence of the Secretary of State, his servants or agents and save also to the extent that that liability may arise out of either the death of or personal injury to any third party caused by the act, neglect or default of the Secretary of State, his servants or agents or out of any matter for which the Secretary of State is to bear the risk or liability pursuant to paragraph 2 [Change in Circumstances With Risk Sharing] of Schedule 2.
- 8.1.3 The Secretary of State shall allow HS1 Co (if it so wishes) to be joined in, but not to take over the defence of, any proceedings brought by any user of HS1 or any third party arising in connection with the relevant liability provided that Clause 18.6 [Confidentiality] shall apply to any documents and other information relating to the proceedings which are supplied to or seen by HS1 Co. If HS1 Co is joined in the proceedings, the Secretary of State shall consult HS1 Co (in as far as he is reasonably able to do so) as to any action which the Secretary of State proposes to take in respect of the relevant liability and shall give HS1 Co such assistance (without an obligation for the Secretary of State to incur costs with a third party or breach any obligation of confidence or any constitutional or other duty) as it reasonably requires in respect of its participation in the defence.
- 8.1.4 If the Secretary of State intends to, and subsequently makes, a claim under this indemnity, the Secretary of State, in as far as he is reasonably able to do so, shall not settle or compromise any claim brought against him or make any payments (other than payments which are in his opinion minor) in connection with any such claim without the prior consent of HS1 Co, which consent shall not be unreasonably withheld or delayed except where HS1 Co has confirmed its intention to defend the claim by the third party and to join in any proceedings relating to that claim.

8.2 Notice of Indemnity

If the Secretary of State or his servants or agents have actual knowledge of any claim, the potential liability of HS1 Co to which a claim could give rise pursuant to the indemnity referred to in Clause 8.1; or both, the Secretary of State shall promptly give or procure the giving of notice to HS1 Co of either or both the claim and the potential liability of HS1 Co, as the case may be.

8.3 Limitation of Liability

Save as expressly provided in this Agreement (including but without limitation Schedule 2 [Change in Circumstances]), a party (the "**first party**") shall not be liable to the other party (the "**second party**") under or in connection with this Agreement in respect of any cost, expense, loss or damage of an indirect or consequential nature suffered by the second party including but not limited to loss of use of property, contractual benefits, revenue, goodwill, cost of business interruption or increased costs of working however arising and whether or not foreseeable at the date of this Agreement. The second party shall not hold liable any of the directors, officers, employees, personnel, agents and contractors of the first party in respect of any matter excluded from the liability of the first party under this Clause 8.3. Each of the parties to this Agreement receives on behalf of the persons referred to in this Clause the benefit of the waiver by the other party both in its own right and as trustee (limited to that purpose only) for those persons.

8.4 Information

Save as expressly stated in this Agreement, information (whether oral or written) relating to the HS1 Concession has been made available by the Secretary of State on the basis and condition that, and this Agreement is entered into on the basis and condition that, neither the Secretary of State nor any of its agents, advisers or employees nor any Government employees have made nor make any representation or warranty as to the accuracy, completeness or reasonableness of that information nor accept any duty of care in relation to HS1 Co in respect of the provision of that information nor shall they be under any liability to HS1 Co either in respect of that information or if that information is or becomes inaccurate, incomplete or misleading in any particular.

9. Insurance

9.1 HS1 Insurances

- 9.1.1 Subject to Clauses 9.1.2, 9.1.3 and 9.2, HS1 Co shall procure that the insurances set out in Schedule 5 [Insurances] are taken out and maintained in full force and effect with insurers or other institutions of international repute. Without prejudice to the generality of the foregoing, HS1 Co shall ensure that no such insurances are cancelled or terminated without three months prior written notice to the Secretary of State or such shorter period as may be agreed in writing between HS1 Co and the Secretary of State.
- 9.1.2 HS1 Co shall ensure that where so identified in Schedule 5 [Insurances] insurance policies name amongst others the Secretary of State and his employees and agents as additional named insureds but not as loss payees under those policies.
- 9.1.3 The obligations of HS1 Co under Clause 9.1.1 to insure shall apply only to the extent that such insurance is available to infrastructure operators generally at a commercial price and on commercial terms in the United Kingdom insurance market and in addition any failure by HS1 Co to comply with Clause 9.1.1 which arises because the relevant insurance is not available as aforesaid shall not constitute an Event of Default unless and to the extent that such unavailability concerns a material risk to HS1, the HS1 Concession, the HS1 Assets or the Ashford Assets and is caused by any action or omission of HS1 Co, its Contractors, its sub-contractors or others for whom HS1 Co is responsible in which case such unavailability may constitute an Event of Default in accordance with Clause 12.1.5 and the Secretary of State may be entitled to terminate this Agreement in accordance with Clause 13 [Termination by the Secretary of State]. To the extent that such insurance is considered by HS1 Co not to be so available, and such unavailability is not caused by any action or omission of HS1 Co, its Contractors, its sub-contractors or others for whom HS1 Co is responsible then HS1 Co shall notify the Secretary of State as soon as possible and in any event within one month before the termination of any existing insurance. If the Secretary of State shall agree, or it is determined in accordance with the Disputes Resolution Procedure that such insurance shall not be available to that particular extent at a commercial price and on commercial terms and such unavailability is not caused by any action or omission of HS1 Co, its Contractors, its sub-contractors or others for whom HS1 Co is responsible then the obligation of HS1 Co to insure against the risks covered by that insurance to that particular extent shall be suspended and the Secretary of State shall provide or procure insurance in favour of himself and HS1 Co against that risk unless and until such insurance shall again become available in the United Kingdom insurance market at a commercial price and on commercial terms save where the Secretary of State chooses not to provide or procure insurance in which case where the insurance is in respect of a material risk to HS1, the HS1 Concession, the HS1 Assets or the Ashford Assets the provisions of paragraph 3.7 of Schedule 2 and Clauses 10.3 to 10.5 shall apply.

9.2 Approval of Insurances

9.2.1 Without prejudice to the generality of Clause 9.1.1, HS1 Co shall, using all prudent and commercial endeavours, supply to the Secretary of State:

9.2.1.1 at least 1 month prior to renewal of any such insurances (or any such shorter period as may be agreed between HS1 Co and the Secretary of State), any insurance proposals of HS1 Co in respect of such risks, underwriting information, proposal forms, draft policies, cover notes (in the case of draft policies and cover notes, where available) and other relevant information, including a list of the leading and other significant proposed insurers, for approval by the Secretary of State, which approval shall not be unreasonably withheld or delayed (and so if the same is withheld the Secretary of State shall specify his reasons therefor); and

9.2.1.2 such additional evidence of compliance with Clause 9.1.1 and Clause 9.1.2 as may be reasonably requested from time to time by the Secretary of State, including for the avoidance of doubt evidence that all relevant premia for such insurances have been paid to the relevant insurers and written confirmation that so far as it is aware, nothing has occurred which would entitle any insurers to avoid any of the said insurances or to regard the same as having been repudiated by HS1 Co and that all of the insurances are held by HS1 Co without encumbrance.

9.2.2 Without prejudice to the generality of Clause 9.2.1, HS1 Co shall supply to the Secretary of State one month prior to the renewal of any insurance required herein to be maintained, a statement outlining the progress made to date in its renewal and any proposed changes to the original insurance other than minor changes which would not affect the position of the Secretary of State, his employees or his agents as additional named insureds or the ability of HS1 Co to carry out its obligations under this Agreement.

9.3 Evidence of Insurance

The supply to the Secretary of State of any documentation required to be so supplied by this Clause 9, including for the avoidance of doubt any draft insurance policy or certificate of insurance, shall not imply acceptance by the Secretary of State that the extent of any insurance cover is sufficient or that the terms of any insurance are satisfactory or, in respect of any risks not insured against, an acceptance by the Secretary of State that the same were not available to infrastructure operators generally at a commercial price and on commercial terms in the United Kingdom insurance market.

9.4 Failure to Maintain Insurance

If HS1 Co fails to provide the documentation required by Clauses 9.1 and 9.2 or fails to effect and keep in full force and effect any of the insurances required in accordance with Schedule 5 [Insurances] and such failure is not caused by unavailability of such insurance to infrastructure operators generally at a commercial price and on commercial terms in the United Kingdom insurance market, or such failure is caused by unavailability but such unavailability is the result of an action or omission of HS1 Co, its Contractors, sub-contractors or others for whom HS1 Co is responsible (and without prejudice to the Secretary of State's right to terminate this Agreement in accordance with Clause 12.1.5 and Clause 13 where such unavailability is in respect of a material risk to HS1, the HS1 Concession, the HS1 Assets or the Ashford Assets), then the Secretary of State shall be entitled to take out any such insurances (either in part or whole) or pay such premia as it considers necessary and to recover the proper and reasonable cost of so doing (including reasonable administrative and other expenses) from HS1 Co provided that the premia so recovered shall not exceed the amount of the premia which would have been payable at a commercial price.

9.5 Insurance Claims

Without prejudice to the provisions of Schedule 2 [Change in Circumstances], in the event that the whole or any part of HS1 is damaged or destroyed HS1 Co shall be obliged either to remedy such damage or destruction at its own cost and repair and reinstate the same, or to procure that the same is done. In the event that HS1 Co or any insured person for whom it is responsible receives payment of any sums in respect of such damage or destruction from an insurer following an insurance claim in respect of damage or destruction of HS1 then it shall either apply the same to remedy the damage or destruction (or reimburse itself for costs already expended so doing) or procure that the said insured person shall do so.

10. Change in Circumstances and Government's Change

10.1 Application of Clause 10

If a Change in Circumstances occurs, except and to the extent that the same may arise out of a breach by HS1 Co of any obligations under this Agreement, Clauses 10.2 to 10.5 shall apply and such application shall be to the exclusion of any other right or remedy of HS1 Co against the Secretary of State, his servants, agents or employees.

10.2 Paragraph 2 Changes

10.2.1 If a Paragraph 2 Change occurs or is shortly to occur, then either party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

10.2.1.1 any necessary change to the HS1 Concession;

10.2.1.2 whether any changes are required to the terms of this Agreement to deal with the Paragraph 2 Change;

10.2.1.3 any Loss of Revenue that will directly result from the relevant Paragraph 2 Change;

10.2.1.4 any Estimated Change in Operating Costs that directly result from the Paragraph 2 Change; and

10.2.1.5 any Capital Expenditure that is required or no longer required as a result of the Paragraph 2 Change,

in each case giving in full detail the procedure for implementing the change.

Responsibility for the costs of implementation shall be dealt with in accordance with Clauses 10.2.2 to 10.2.11.

10.2.2 As soon as practicable after receipt of any notice from either party under Clause 10.2.1, the parties shall discuss and agree the issues referred to in Clause 10.2.1 and any ways in which HS1 Co can mitigate the effect of the Paragraph 2 Change, including:

10.2.2.1 providing evidence that HS1 Co has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Contractors to minimise any increase in costs and maximise any reduction in costs;

10.2.2.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Circumstances at that time have been taken into account by HS1 Co;

- 10.2.2.3 giving evidence as to how the Paragraph 2 Change has affected prices charged by any business similar to the business of HS1 Co;
- 10.2.2.4 demonstrating that any future increase in revenues anticipated to result directly from the Paragraph 2 Change has been taken into account in the Loss of Revenue which in its opinion will directly result from the Paragraph 2 Change; and
- 10.2.2.5 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to operate, repair or maintain assets that have been affected by the Paragraph 2 Change concerned, has been taken into account in the amount which in its opinion has resulted or is required under Clause 10.2.1.4.

Where the parties cannot agree any of the matters referred to in this Clause 10.2.2 as matters to be agreed by the parties, such matters shall be determined under the Disputes Resolution Procedure.

- 10.2.3 In order for HS1 Co to qualify for financial support by the Secretary of State for any Estimated Change in Operating Costs arising from a Paragraph 2 Change (other than the Loss of an HS1 Co TSI Derogation) such estimated Change in Operating Costs must satisfy either of the following conditions:

- 10.2.3.1 according to the determination of the ORR, such Estimated Change in Operating Costs:

- (a) is not OMRC; or
- (b) is OMRC but is not likely to be capable of being borne by operators of Train Services on HS1 as OMRC,

provided that such financial support shall be payable by the Secretary of State to HS1 Co only to the extent that such Estimated Change in Operating Costs is either not OMRC or is not likely to be capable of being borne as aforesaid; or

- 10.2.3.2 according to the determination of the ORR, such Estimated Change in Operating Costs for any Control Period:

- (a) is OMRC in whole or in part; and
- (b) such amount that is OMRC is likely to be capable of being borne by operators of Train Services on HS1 as OMRC; and
- (c) such amount that is OMRC is, in the reasonable opinion of the ORR (having regard to all relevant information), likely to represent more than 30% of the OMRC for the Control Periods in question.

- 10.2.4 If a Paragraph 2 Change (other than the Loss of an HS1 Co TSI Derogation) qualifies for financial support by the Secretary of State under Clause 10.2.3 above, the Secretary of State shall pay to HS1 Co an amount equal to the Estimated Change in Operating Costs less (where relevant) HS1 Co's Share in such instalments and at such times as the parties may agree acting reasonably on the basis that HS1 Co shall be in no better and no worse position with respect to operating, repairs and maintenance costs of the HS1 Assets than it would have been had the Change in Circumstances not occurred.

- 10.2.5 To the extent that the ORR determines that any Capital Expenditure which directly results from a Paragraph 2 Change (other than the Loss of an HS1 Co TSI Derogation) is not OMRC, the Secretary of State shall pay to HS1 Co an amount equal to such Capital Expenditure less any Capital Expenditure that is no longer required as a result of that Paragraph 2 Change and less (where relevant) HS1 Co's Share in such instalments and at such times as the parties may agree acting reasonably on the basis that HS1 Co shall be in no better and no worse position with respect to Capital Expenditure than it would have been had the Change in Circumstances not occurred and taking into account any increase in revenues net of any increase in operating costs arising from the Paragraph 2 Change.
- 10.2.6 HS1 Co may refer the matters specified in Clauses 10.2.3 and 10.2.5 to the ORR pursuant to the Decision Making Procedure.
- 10.2.7 To the extent that the ORR determines that any Estimated Change in Operating Costs or increase in Capital Expenditure arising from the Loss of an HS1 Co TSI Derogation is:
- 10.2.7.1 not recoverable by HS1 Co through track access charges; or
- 10.2.7.2 not likely to be capable of being borne by operators of Train Services on HS1,
- the Secretary of State shall pay to HS1 Co an amount equal to the Estimated Change in Operating Costs and/or increase in Capital Expenditure less any Capital Expenditure that is no longer required as a result of the Loss of such HS1 Co TSI Derogation less (where relevant) HS1 Co's Share in such instalments and at such times as the parties may agree acting reasonably on the basis that HS1 Co shall be in no better and no worse position with respect to operating, repairs and maintenance costs of the HS1 Assets and Capital Expenditure than it would have been had the Loss of an HS1 Co TSI Derogation not occurred and taking into account any increase in revenues net of any increases in operating costs arising from the loss of such HS1 Co TSI Derogation.
- 10.2.8 HS1 Co may refer the matters referred to in Clause 10.2.7 to the Decision Making Procedure.
- 10.2.9 It is acknowledged and agreed that in order to make any determination pursuant to Clause 10.2.3, Clause 10.2.5 or Clause 10.2.7, the ORR may conduct a public consultation with interested persons.
- 10.2.10 The Secretary of State shall pay any monies payable by the Secretary of State pursuant to this Clause 10 relating to Renewals and Replacements costs (save for those relating to the EdF Assets which shall be paid into such account as HS1 Co shall direct) into the Escrow Account and monies relating to operating, repairs and maintenance of the HS1 Assets (other than (save as aforesaid) Renewals and Replacements costs) into such account as HS1 Co shall direct.
- 10.2.11 In agreeing the amount of any Loss of Revenue arising from a Paragraph 2 Change the parties shall have regard to any determination of the ORR pursuant to Clauses 10.2.3.1(b), 10.2.3.2(b) or Clause 10.2.7.2 (as appropriate). Any Loss of Revenue shall be agreed or determined on a one-off basis.
- 10.2.12 The Secretary of State shall pay to HS1 Co an amount equal to any Loss of Revenue arising from a Paragraph 2 Change less (where relevant) HS1 Co's Share in such instalments and at such times as the parties may agree acting reasonably on the basis that HS1 Co shall be in no better and no worse position with respect to future revenues than it would have been had the Change in Circumstances not occurred.

10.2.13 Where the parties cannot agree to the amount of financial support and/or instalments and/or times for payment under Clauses 10.2.4, 10.2.5, 10.2.7 or 10.2.11 such matters shall be determined under the Disputes Resolution Procedure.

10.2.14 It is acknowledged and agreed that once:

10.2.14.1 the ORR has made its determination pursuant to Clauses 10.2.3, 10.2.5 or 10.2.7 (subject to any challenge by HS1 Co pursuant to paragraph 5.1 of Schedule 8 [Decision Making and Enforcement Procedure]);

10.2.14.2 the parties have agreed the amount of any Loss of Revenue pursuant to Clause 10.2.11 or such amount has been determined in accordance with the Disputes Resolution Procedure; or

10.2.14.3 the matters described in Clause 10.2.13 have been agreed or determined in accordance with that Clause,

such agreements or determinations shall be final and binding and shall not be subject to review by the ORR at an Access Charges Review other than to take into account any amounts to be paid to or payable by HS1 Co in respect of HS1 Railway Infrastructure in accordance with Schedule 10 [Asset Stewardship and Periodic Review].

10.2.15 HS1 Co's Share shall be solely for the account of HS1 Co.

10.2.16 For the avoidance of doubt, there shall be no double-counting of costs when calculating an Estimated Change in Operating Costs, Capital Expenditure or Loss of Revenue arising from a Paragraph 2 Change.

10.2.17 The Secretary of State shall when making any payment to HS1 Co by way of financial support pursuant to this Clause 10.2 notify the ORR as to the amount paid to HS1 Co including information as to the bank account into which any such amount is paid and any monies paid to the Escrow Account in accordance with Clause 10.2.10.

10.3 Paragraph 3 Change

If a Paragraph 3 Change occurs, HS1 Co may terminate this Agreement in accordance with the procedure set out at Clauses 10.4 and 10.5.

10.4 Notices of Paragraph 3 Change

Following the occurrence of the Paragraph 3 Change or, in the case of paragraph 3.5 [European Court] of Schedule 2 [Change in Circumstances], the receipt of notification from the Secretary of State (which the Secretary of State shall promptly give) that the relevant event has occurred, HS1 Co may give notice to the Secretary of State either stating that it wishes to terminate this Agreement or stating that it requests the Secretary of State to enter into negotiations. Where the Paragraph 3 Change referred to in paragraph 3.3 [Adverse Relevant Change in Law] applies then the Secretary of State may give notice to terminate this Agreement. Where the party who receives the notice disputes that a Paragraph 3 Change has occurred then the Dispute shall be referred to the Disputes Resolution Procedure by either party within 10 Business Days of receipt of the notice. In the event that the parties agree or it is determined by the Disputes Resolution Procedure that a Paragraph 3 Change has occurred the provisions of Clause 10.5 shall apply.

10.5 Responding Notice

10.5.1 Except where the Secretary of State has given notice under Clause 10.4 he shall, within 10 Business Days of receipt of the notice from HS1 Co under Clause 10.4 or the ruling by the Disputes Resolution Procedure referred to in Clause 10.4 (whichever

is the later), respond to the notice as to whether he wishes either to accept the notice of termination or enter into negotiations as the case may be.

10.5.2 Where either party gives notice that he or it wishes to negotiate, the parties shall use their reasonable endeavours to reach a solution acceptable to both of them within 45 Business Days from the date of notice to negotiate.

10.5.3 In the event that either:

10.5.3.1 following a notice to negotiate, the parties have used their reasonable endeavours to reach a solution in accordance with Clause 10.5.2 acceptable to both but have failed to reach a solution within the relevant period set out above; or

10.5.3.2 the Secretary of State has indicated that he wishes to terminate this Agreement in accordance with Clause 10.4 or, HS1 Co has indicated that it wishes to terminate this Agreement in accordance with Clause 10.4 and the Secretary of State has indicated that he does not wish to negotiate,

then either party may terminate this Agreement by giving 5 Business Days notice to the other and:

- (a) this Agreement shall then be terminated;
- (b) the provisions of Clause 15 [Termination or Expiry of HS1 Concession] shall apply (other than the provisions of Clause 15.1.1); and
- (c) 10.5.3.3 HS1 Co shall be entitled to receive compensation in accordance with Clause 14 [Termination by HS1 Co].

10.6 Request for Government's Change

The Secretary of State may for any reason give notice to HS1 Co requesting a Government's Change.

10.7 Counter Notice

10.7.1 Within 20 Business Days of service of a notice under Clause 10.6, HS1 Co may give notice to the Secretary of State that it objects to the Government's Change, but may only do so for either or both of the following reasons:

10.7.1.1 on any one or more of the following grounds:

- (a) if it requires the HS1 Concession to be carried out in a way that infringes any law or is inconsistent with Best Practice;
- (b) if it would cause any consent to be revoked (or a new consent required to implement the relevant Government's Change to be unobtainable);
- (c) if it would materially and adversely affect HS1 Co's ability to carry out the HS1 Concession in accordance with the terms of this Agreement;
- (d) if it would materially and adversely affect the health and safety of any person or the safety and operability of the HS1 Assets, the Ashford Assets or the Maintenance Works;

- (e) if it would require HS1 Co to implement the Government's Change in an unreasonable period of time;
- (f) if it would (if implemented) materially and adversely change the nature of the HS1 Concession (including its risk profile) and/or the business and activities of HS1 Co (in so far as these relate to the carrying out of the HS1 Concession); and/or
- (g) the Secretary of State does not have the legal power or capacity to require the implementation of such Government's Change; or

10.7.1.2 if the Government's Change would result in an Estimated Change in Operating Costs, a Loss of Revenue and/or Capital Expenditure.

10.7.2 In the case that such notification is on one of the grounds contained in Clause 10.7.1.1, then the provisions of Clause 10.8 [Contested Ground] shall apply. If the notification is not on one of the grounds contained in Clause 10.7.1.1 but is on the grounds contained in Clause 10.7.1.2, then HS1 Co shall proceed with such Government's Change and the provisions of Clause 10.9 shall apply.

10.8 Contested Ground

10.8.1 If HS1 Co objects to the Government's Change on one or more of the grounds contained in Clause 10.7.1.1, then HS1 Co shall, in the notice given under Clause 10.7, state the reason why it believes that the Government's Change would or will have the effect described in that ground or grounds and shall, at the request of the Secretary of State and at no cost to the Secretary of State, provide such further assessments or calculations as the Secretary of State may reasonably require to determine whether HS1 Co may object on that ground or grounds.

10.8.2 If the Secretary of State does not accept the reason stated by HS1 Co in the notice given under Clause 10.7 and no agreement can be reached with HS1 Co as to the implementation of the Government's Change, then either party may refer the matter to the Disputes Resolution Procedure to determine whether the objection is justified or whether any alternative proposals to the Government's Change which have been discussed by the parties are more appropriate.

10.8.3 If HS1 Co's objection is upheld, or any alternative proposal on the ground or grounds of the objection is ruled out, by the Disputes Resolution Procedure, then the request for the Government's Change shall be deemed to be withdrawn unless in the meantime it shall cease to have become a proposed Government's Change and becomes an actual Government's Change in which case the provisions of Clause 10.8.5 shall apply.

10.8.4 If HS1 Co's objection is not upheld by the Disputes Resolution Procedure, then the Secretary of State shall confirm the Government's Change by notice accompanied by a copy of the relevant decision to HS1 Co (who shall sign and return to the Secretary of State a copy of that notice) and HS1 Co shall proceed with such Government's Change and the provisions of Clause 10.8.5 shall apply.

10.8.5 Where the circumstances in Clause 10.8.3 or 10.8.4 referring to this Clause 10.8.5 exist, HS1 Co shall be entitled to submit a revised estimate of the Estimated Change in Operating Costs, any Loss of Revenue and/or any Capital Expenditure and the provisions of Clause 10.9 shall apply.

10.9 Estimated Change in Operating Costs, Loss of Revenue and/or Capital Expenditure for a Government's Change

- 10.9.1 As soon as practicable after receipt of any notice from HS1 Co pursuant to Clause 10.7.1 on the grounds contained in Clause 10.7.1.2 or where Clause 10.8.5 applies, the parties shall discuss and agree the Estimated Change in Operating Costs, any Loss of Revenue and/or any Capital Expenditure for a Government's Change and any ways in which HS1 Co can mitigate the effect of the Government's Change, including:
- 10.9.1.1 providing evidence that HS1 Co has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Contractors to minimise any increase in costs and maximise any reduction in costs;
 - 10.9.1.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Government's Changes at that time have been taken into account by HS1 Co;
 - 10.9.1.3 giving evidence as to how the Government's Change has affected prices charged by any business similar to the business of HS1 Co;
 - 10.9.1.4 demonstrating that any future increase in revenues anticipated to result directly from a Government's Change has been taken into account in the Loss of Revenue which in its opinion will directly result from the Government's Change; and
 - 10.9.1.5 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to operate, repair or maintain assets that have been affected by the Government's Change concerned, has been taken into account in the amount which in its opinion constitutes the Estimated Change in Operating Costs.
- 10.9.2 The Secretary of State shall pay to HS1 Co an amount equal to the Capital Expenditure in such instalments and at such times as the parties may agree acting reasonably on the basis that HS1 Co shall be in no better and no worse position than it would have been had the Government's Change not occurred.
- 10.9.3 The Secretary of State shall pay to HS1 Co an amount equal to the Estimated Change in Operating Costs and any Loss of Revenue in such instalments and at such times as the parties may agree acting reasonably on the basis that HS1 Co shall be in no better and no worse position than it would have been had the Government's Change not occurred.
- 10.9.4 Where the parties cannot agree to the instalments and/or times for payment under Clauses 10.9.2 or 10.9.3, such matters shall be determined under the Disputes Resolution Procedure.
- 10.9.5 For the avoidance of doubt, there shall be no double-counting of costs when calculating an Estimated Change in Operating Costs or Loss of Revenue arising from a Government's Change.
- 10.9.6 Where the provisions of Clauses 10.7.1.2 or 10.8.5 apply and the parties have agreed any Estimated Change in Operating Costs, a Loss of Revenue and/or Capital Expenditure pursuant to Clause 10.9.1 and the any instalments or times for payment under Clauses 10.9.1 or 10.9.2 or such matters have been determined in accordance with the Disputes Resolution Procedure and action is required by HS1 Co to effect the Government's Change, then HS1 Co shall effect such Government's Change as soon as reasonably possible.

11. Records and Accounts

11.1 Records

Without prejudice to its obligations contained in paragraph 5 [Asset Information and Asset-Specific Procedures] of Schedule 10 [Asset Stewardship and Periodic Review] and in accordance with that provision, HS1 Co shall retain and maintain or cause to be retained and maintained those records referred to in Schedule 6 [Records] relating to:

- 11.1.1 the design and construction of HS1; and
- 11.1.2 the maintenance of the HS1 Assets or the Ashford Assets and the operation of passenger and freight services.

for the periods identified against the class of records in Schedule 6 [Records] and shall, both before the expiry of the relevant periods and for so long as the records are retained by HS1 Co after the expiry of the relevant period, on reasonable notice make the records available for inspection to the Secretary of State or the ORR where he or it has reasonable cause for requiring the same.

11.2 Provision of Accounts

11.2.1 HS1 Co shall provide to the Secretary of State and (to the extent reasonably required for the carrying out or exercising of functions, responsibilities, rights and obligations hereunder) to the ORR:

- (a) not later than 130 Business Days after the end of each accounting reference period of HS1 Co, part or all of which falls between the date of this Agreement and the date of termination of the HS1 Concession (whether by the effluxion of time or otherwise), a copy of HS1 Co's audited accounts and, if appropriate, of the consolidated audited accounts of HS1 Co, in respect of that period, prepared in accordance with the Companies Acts and generally accepted accounting principles in the United Kingdom, consistently applied and including balance sheets, profit and loss accounts and cash flow statements together with relevant notes to those accounts and copies of all related directors' and auditor's reports and all other notices and circulars to shareholders;
- (b) access to all records of costs and expenses incurred by it in connection with the performance of its obligations under this Agreement on an open-book basis.

11.2.2 The Secretary of State may at his own cost, but not vexatiously or frivolously, appoint an independent firm of chartered accountants to inspect HS1 Co's books and records.

11.3 Retention of Records

11.3.1 Prior to the Expiry Date or earlier termination of this Agreement, where records are maintained as provided in Clause 11.1 and the period for their retention (as set out against the relevant class of records in Schedule 6 [Records]) has expired, HS1 Co shall notify the Secretary of State as to what it intends to do with the records and if, at any time thereafter, HS1 Co intends to cease retaining and maintaining the records, it shall notify the Secretary of State of its intention and shall continue to retain and maintain the records and make them available for inspection in accordance with Clause 11.1 for a minimum period of 30 Business Days after notice is given. The Secretary of State may, by notice to HS1 Co within the 30 Business Days, elect to

receive certain of those records and, upon receipt of the notice, HS1 Co shall deliver up such records at the place where they have been retained.

11.3.2 Upon the Expiry Date or earlier termination of this Agreement, HS1 Co shall, in accordance with the directions of the Secretary of State, either:

11.3.2.1 deliver all the records referred to in Clause 11.1 which were in existence at the date of termination or expiry to the Secretary of State or its nominee; or

11.3.2.2 for a period of not more than 5 years following the Expiry Date or earlier termination of this Agreement or such lesser period as is set out against each class of records in Schedule 6 [Records], HS1 Co shall retain in safe storage all the records referred to in Clause 11.1 which were in existence at the date of termination of this Agreement. Upon the expiry of the relevant period or at the earlier request of the Secretary of State, HS1 Co shall deliver up all those records (or where those records are required by statute to remain with HS1 Co or an Associate of HS1 Co, copies of those records) to the Secretary of State at the place where they have been retained. The Secretary of State shall make available to HS1 Co on reasonable notice copies of all the records HS1 Co delivers up pursuant to this Clause 11.3 but the Secretary of State shall not be obliged to keep the records for more than 2 years after the expiry of the relevant period and shall, prior to disposing of them, offer them to HS1 Co.

11.4 Costs of Retaining Records

The costs of retaining the records in safe storage and delivering up the records in accordance with Clause 11.3.2.2 shall be borne:

11.4.1 by HS1 Co where the termination arises as a result of an Event of Default;

11.4.2 by the Secretary of State where the termination arises pursuant to paragraphs 3.1, 3.2, 3.3 or 3.4 of Schedule 2 [Change in Circumstances]; and

11.4.3 in the case of termination in cases other than those governed by Clauses 11.4.1 and 11.4.2 or expiry by effluxion of time, by HS1 Co and the Secretary of State in equal proportions.

12. Termination

12.1 Events of Default

The following shall constitute Events of Default:

12.1.1 a petition is issued in respect of HS1 Co or an order is made or an effective resolution is passed for the winding up of HS1 Co or an order or application is made for the appointment of a receiver (including an administrative receiver), administrator, (including a special railway administrator under the Railways Act 1993), trustee or similar officer of HS1 Co or an encumbrancer, receiver (including an administrative receiver) or other similar officer takes possession of the whole or any part (which is material in the context of the performance of all or any of HS1 Co's obligations under this Agreement) of the undertaking, property or assets of HS1 Co, or HS1 Co enters into a composition involving HS1 Co and its creditors generally provided that:

12.1.1.1 subject to Clause 12.1.1.2, in the case of any such action as is referred to in this Clause 12.1.1, there shall only be an Event of Default if the petition, application, possession or composition is not withdrawn, set aside, dismissed or revoked either within a period of 12 weeks from the date of service or

making of the petition or application or, if the petition or application has been actively contested by HS1 Co in good faith and by appropriate injunctive or other proceedings, then on or before the expiry of any longer period during which the petition or application continues to be so actively contested; and

- 12.1.1.2 any petition presented by HS1 Co shall be deemed served as at the date of presentation;
- 12.1.2 HS1 Co sells, transfers, leases or otherwise disposes of the whole or any part (which is material in the context of the performance of HS1 Co's obligations under this Agreement) of its respective undertakings, rights or assets by a single transaction or a number of transactions (whether related or not and whether at the same time or over a period of time);
- 12.1.3 a Change in Ownership occurs otherwise than in accordance with Clause 17;
- 12.1.4 a particularly serious default in relation to HS1 Co's obligations under:
 - 12.1.4.1 this Agreement (other than a particularly serious default in relation to HS1 Co's obligations under Schedule 3 [Minimum Operational Standards], Schedule 8 [Decision Making and Enforcement Procedures] and/or Schedule 10 [Asset Stewardship and Periodic Review]); or
 - 12.1.4.2 the Agreement for Lease, the HS1 Lease, the Ebbsfleet Underlease or the Ashford Leases which is sufficiently serious in the context of the totality of HS1 Co's obligations under this Agreement, the Agreement for Lease, the HS1 Lease, the Ebbsfleet Underlease and the Ashford Leases as a whole,

provided that there will not be a breach of Clause 9.1.1 or 9.1.2 where the exception in Clause 9.1.3 applies;
- 12.1.5 unavailability of insurance in respect of a material risk to the HS1 Assets or the Ashford Assets or to carrying out the requirements of the HS1 Concession where such unavailability is caused by any action or omission of HS1 Co, its Contractors, its sub-contractors or others for whom HS1 Co is responsible; or
- 12.1.6 failure by HS1 Co to comply with:
 - 12.1.6.1 a Final Order that has not been appealed within three calendar months of receipt by HS1 Co in accordance with paragraph 5 [Challenge by the Secretary of State or HS1 Co] of Schedule 8 [Decision Making and Enforcement Procedure]; or
 - 12.1.6.2 a Final Order that has been appealed and upheld by the court (whether at first instance or on further appeal) within thirty (30) Business Days of the date of the judgment of the final court or such other period as that court may order; or
 - 12.1.6.3 where the Secretary of State or the ORR has applied to the court to enforce a Provisional Order or Final Order, any final order of the court (or appeal court) enforcing such Provisional Order or Final Order within such period as the court may order or, where no such period is prescribed, within 20 Business Days of the date of the court's order.

12.2 Entitlement to Terminate

The Secretary of State shall be entitled to terminate this Agreement, and, after they come into force, the Agreement for Lease, the HS1 Lease, or the Ebbsfleet Underlease or the Ashford Leases subject to and in accordance with the provisions of Clauses 13 [Termination by Secretary of State] and 15 [Effect of Termination] following the occurrence of any Event of Default.

13. Termination by the Secretary of State

13.1 Notice of Default Under Clauses 12.1.1, 12.1.2 and 12.1.6

13.1.1 In the case of an Event of Default under Clauses 12.1.1 or 12.1.2 the Secretary of State may give notice to HS1 Co terminating this Agreement immediately subject to Clause 13.4 [Referral of Notice of Termination].

13.1.2 In the case of an Event of Default under Clause 12.1.6 the Secretary of State may give notice to HS1 Co terminating this Agreement immediately.

13.1A Secretary of State's right of termination

13.1A.1 Notwithstanding any other provision of any agreement entered into by the Secretary of State and HS1 Co (including the Operator Direct Agreement), the Secretary of State may only exercise his rights of termination or other remedies under this Agreement in respect of a Relevant Termination Event as set out in Clauses 13.1A.2 and 13.1A.3 below.

13.1A.2 If any Provisional Order or Final Order issued in connection with the occurrence of a Relevant Termination Event requires HS1 Co:

13.1A.2.1 to terminate the Operator Agreement; and

13.1A.2.2 to enter into a new Operator Agreement with a replacement Operator:

(a) on materially the same terms as the Operator Agreement with respect to services to HS1 Co to be provided by the Operator; and/or

(b) on any other terms reasonably required by the ORR,

the Secretary of State may only exercise his rights of termination or other remedies under this Agreement if HS1 Co has failed to comply with the relevant Provisional Order or Final Order as set out in Clause 12.1.6 of this Agreement.

13.1A.3 In all other cases in which a Relevant Termination Event has occurred and is continuing, the Secretary of State may only exercise his rights of termination or other remedies under this Agreement at the end of the Replacement Period provided that HS1 Co is taking steps to procure the remedy of the Relevant Termination Event and to comply with the terms of any Provisional Order and/or Final Order issued in relation to such Relevant Termination Event.

13.1A.4 Upon request by HS1 Co and/or the HS1 Co Security Trustee, the Secretary of State shall provide reasonable assistance to HS1 Co and/or the HS1 Co Security Trustee with respect to procuring a replacement Operator and a replacement Operator Agreement.

13.2 Notice of Default Under Remainder of Clause 12.1

In the case of the occurrence of an Event of Default under Clause 12.1 (other than those referred to in Clause 13.1), the Secretary of State shall give notice to HS1 Co requiring HS1 Co at HS1 Co's option either:

13.2.1 to remedy the breach or breaches referred to in the notice of default within 65 Business Days of the notice; or

- 13.2.2 to put forward within 65 Business Days of the notice a reasonable programme for the remedying of the breach or breaches (including, where appropriate, a proposal for a replacement Contractor), specifying in reasonable detail the manner in which the breach or breaches is or are proposed to be remedied and the latest date by which it is proposed that the breach or all the breaches shall be remedied.

Where HS1 Co puts forward a programme in accordance with Clause 13.2.2, the Secretary of State shall have a period of 20 Business Days from receipt of the programme within which to notify HS1 Co that he accepts the programme or does not accept the programme as being capable of remedying the relevant Event of Default in all material respects and within a reasonable period and if the Secretary of State fails to give notice within that period of 20 Business Days, he shall be deemed to have accepted such programme. The Secretary of State shall act reasonably in deciding whether or not to accept a programme. Where the Secretary of State notifies HS1 Co that he does not accept the programme, the parties shall endeavour within the following five Business Days to agree any necessary amendments to the programme put forward, failing which the question of whether or not the programme (as the same may have been amended by agreement or as HS1 Co may have offered to amend) is so capable (and, if not, what further amendments are to be made to make the programme so capable) shall be resolved in accordance with the Disputes Resolution Procedure.

13.3 Termination following an Event of Default

If:

- 13.3.1 the breach or breaches notified in a notice of default served under Clause 13.2 is or are not remedied because HS1 Co has failed to use best endeavours either before the expiry of the 65 Business Days or, where HS1 Co puts forward a programme pursuant to Clause 13.2.2 which has been accepted by the Secretary of State, or has been determined (as adjusted if necessary) by the Disputes Resolution Procedure as being capable as aforesaid, in accordance with such programme;
- 13.3.2 the programme put forward by HS1 Co pursuant to Clause 13.2.2 or as HS1 Co may have offered to amend is rejected by the Secretary of State as not being capable as aforesaid, and the findings in accordance with the Disputes Resolution Procedure does not find against that rejection; or
- 13.3.3 HS1 Co does not commence implementing the programme put forward pursuant to Clause 13.2.2 (as the same may be, or offered to be, amended as aforesaid) within 5 Business Days after it is accepted by the Secretary of State or has been determined (as adjusted if necessary) by a decision in accordance with the Disputes Resolution Procedure as being capable as aforesaid,

then subject to Clause 13.4, the Secretary of State may terminate this Agreement by giving notice to HS1 Co and such termination shall take effect 10 Business Days after receipt of such notice by HS1 Co or at such later date as is specified in the notice. Save as provided in Clause 13.1, this Clause 13.3 and Clause 13.5 the Secretary of State may not terminate this Agreement by reason of any default by HS1 Co.

13.4 Referral of Notice of Termination

- 13.4.1 Where the Secretary of State has given notice of termination of this Agreement under either or both Clause 13.1.1 and Clause 13.2 and HS1 Co has within 10 Business Days of receipt of that notice (or, in the case of Clause 13.2.2, within 10 Business Days of receipt of notice of non-acceptance of the programme) referred the question of whether or not the Secretary of State was entitled to give such notice under the Disputes Resolution Procedure, termination of this Agreement shall not take effect unless and until it is finally determined in accordance with the Disputes Resolution Procedure that such termination is valid.

13.4.2 Where a notice of termination has been given and a reference under the Disputes Resolution Procedure is not made pursuant to Clause 13.4.1 then either party may either or both apply to the Court for injunctive or declaratory relief (whichever shall be appropriate) in respect of such purported termination and refer to the Court the question as to whether this Agreement has been wrongfully terminated and, if so, the damages accruing from the wrongful termination in which event such matter shall be dealt with by the Court and not pursuant to the Disputes Resolution Procedure. Termination of this Agreement shall not take effect until it has been finally determined by the Court whether or not injunctive or declaratory relief is to be granted. Any Court proceedings shall be conducted by both parties with due expedition.

13.5 Termination following an Adverse Relevant Change in Law

The Secretary of State may give notice to HS1 Co terminating this Agreement if a change referred to in paragraph 3.3 of Schedule 2 [Adverse Relevant Change in Law] occurs, in accordance with Clauses 10.4 and 10.5 [Responding Notice].

14. Termination by HS1 Co

14.1 Compensation

In the event of this Agreement being terminated pursuant to Clause 10.3 and provided that the Secretary of State has not given proper notice pursuant to Clause 13 [Termination by the Secretary of State] (other than Clause 13.5 [Termination following an Adverse Relevant Change in Law]), the Secretary of State shall pay to HS1 Co:

14.1.1 in respect of a Paragraph 3 Change arising under any of paragraphs 3.1 to 3.4 of Schedule 2 [Change in Circumstances] an amount equal to the Default Termination Compensation Amount as agreed or determined pursuant to Clause 14.2; or

14.1.2 in respect of a Paragraph 3 Change arising under any of paragraphs 3.5 to 3.7 of Schedule 2 [Change in Circumstances] an amount equal to the Non-Default Termination Compensation Amount as agreed or determined pursuant to Clause 14.3.

14.2 Default Termination Compensation Amount

The Default Termination Compensation Amount shall be calculated as follows:

14.2.1 The Base Senior Debt Termination Amount; and

14.2.2 redundancy payments that have been or will be reasonably incurred by HS1 Co as a direct result of the termination of this Agreement and any Sub-Contractor Breakage Costs; and

14.2.3 the Equity Amount.

14.3 The Non-Default Termination Compensation Amount

The Non-Default Termination Compensation Amount shall be calculated as follows:

14.3.1 the Base Senior Debt Termination Amount; and

14.3.2 all amounts paid in respect of the acquisition of or subscription for shares in the capital of HS1 Co less dividends and other distributions paid to the shareholders of HS1 Co in respect of such shares; and

- 14.3.3 redundancy payments that have been or will be reasonably incurred by HS1 Co as a direct result of the termination of this Agreement and any Sub-Contractor Breakage Costs,

provided that if the amounts referred to in Clause 14.3.2 are less than zero, then, for the purposes of this calculation they shall be deemed to be zero.

14.4 Payment of Compensation

- 14.4.1 If the parties cannot agree on the Default Termination Compensation Amount or the Non-Default Termination Compensation Amount on or before the date falling 20 Business Days after the date of termination then such amount shall be determined in accordance with the Disputes Resolution Procedure.
- 14.4.2 The Secretary of State shall pay to HS1 Co an amount equal to the Default Termination Compensation Amount on or before the date falling 45 Business Days after the Notice Date plus an amount equal to the amount of all interest and Default Interest incurred by HS1 Co in relation to the Default Termination Compensation Amount between the date of termination and the date of payment by the Secretary of State in accordance with this Clause 14.4.2.
- 14.4.3 The Secretary of State shall pay to HS1 Co an amount equal to the Non-Default Termination Compensation Amount, together with interest on the Base Senior Debt Termination Amount element of the Non-Default Termination Compensation Amount at a non-default interest rate accruing from the date of termination until the date of payment of the Non-Default Termination Compensation Amount in accordance with this Clause 14.4.3 on or before the date falling 45 Business Days after the Notice Date.
- 14.4.4 The discharge by the Secretary of State of its obligation in Clause 14.4.2 or 14.4.3 is in full and final settlement of all HS1 Co's claims and rights against the Secretary of State for breaches and/or termination of this Agreement whether in contract, tort, restitution or otherwise save for any liability that arose prior to the date of termination (but not from the termination itself) that has not been taken into account in determining the Default Termination Compensation Amount or the Non-Default Termination Compensation Amount.

15. Effect of Termination or Expiry of HS1 Concession

15.1 Consequences of Termination or Expiry of HS1 Concession

Save as otherwise expressly provided in this Agreement:

- 15.1.1 where termination has arisen as a result of an Event of Default, termination of this Agreement shall be without prejudice to the right of the Secretary of State to recover damages from HS1 Co in accordance with the provisions of this Agreement (after giving due allowance against those damages (without any obligation to make payment or give other credit for those damages) for the value of the HS1 Assets and the Ashford Assets (if any) that the Secretary of State has acquired); and
- 15.1.2 upon the termination of this Agreement whether through the expiry by effluxion of time or otherwise, following the instructions of the Secretary of State HS1 Co shall procure that either:
- 15.1.2.1 the Key Contracts, the Agreement for Lease, the HS1 Lease, the Ebbsfleet Underlease and the Ashford Leases shall terminate unless any provisions of the Key Contracts, the Agreement for Lease, the HS1 Lease, the Ebbsfleet Underlease or the Ashford Leases are stated in the Key Contracts, the

Agreement for Lease, the HS1 Lease, the Ebbsfleet Underlease or the Ashford Leases to survive termination; or

15.1.2.2 that such agreements shall be novated or assigned to the Secretary of State or the Secretary of State's nominee (as the Secretary of State shall direct).

15.2 Further Consequences of Termination or Expiry of the HS1 Concession

On termination of this Agreement:

- 15.2.1 the Secretary of State may exercise his power to withdraw the rights conferred upon HS1 Co under and in accordance with the CTRL Act but, for the avoidance of doubt, the Secretary of State acknowledges that he will not withdraw such rights in any other circumstance;
- 15.2.2 if termination occurs during the execution of any of the Maintenance Works, HS1 Co shall (subject to Clause 15.2.4) transfer to and there shall vest in the Secretary of State or his nominee such part of the Maintenance Works as shall have been carried out on the HS1 Lands and if the Secretary of State so elects the parties shall use all reasonable endeavours to procure that all materials and Plant on the HS1 Lands or adjacent to them shall remain available to him or his nominee for the purposes of completing the Maintenance Works;
- 15.2.3 upon the Expiry Date or earlier termination of this Agreement, HS1 Co shall (to the extent that the HS1 Assets and the Ashford Assets do not vest in the Secretary of State or his nominee and upon termination of the HS1 Lease, the Ebbsfleet Underlease and the Ashford Leases) transfer or procure the transfer to, and there shall vest in, the Secretary of State or his nominee the HS1 Assets and the Ashford Assets which shall be in the state required in accordance with Clause 7.1 or 7.2 (as appropriate) [Asset Stewardship] or in accordance with the operations, repairs and maintenance covenants contained in the HS1 Lease, the Ebbsfleet Underlease, the Temple Mills Lease or the Ashford Leases as appropriate;
- 15.2.4 the Secretary of State shall have an option, if Clauses 15.2.2 or 15.2.3 apply, to purchase from HS1 Co or procure the purchase from any Associate of HS1 Co at a fair market value and free from any security interest such of the stocks of material, road vehicles, spare parts and other moveable property owned by HS1 Co or any Associate as are reasonably required in connection with the operation, repair and maintenance of HS1;
- 15.2.5 HS1 Co shall deliver to the Secretary of State "as-constructed drawings" for the HS1 Assets and drawings showing all alterations made since the completion of construction of HS1 and operation, repair and maintenance manuals for the same; and
- 15.2.6 HS1 Co shall use all reasonable endeavours to make available to the Secretary of State the services of such of its staff as the Secretary of State may require on terms no less favourable than those on which such staff are employed as at the date of termination of this Agreement pending the offer by the relevant successor company and the acceptance of new terms of employment by that staff.

15.3 Accrued Rights and Obligations

Termination of this Agreement shall be without prejudice to any accrued rights and obligations as at the date of termination of this Agreement except as expressly provided to the contrary and except where payment or compensation is made or is made available by the Secretary of State under Schedule 2 [Change in Circumstances]. Termination of this Agreement shall not affect the continuing rights and obligations of HS1 Co and the Secretary of State pursuant to Clauses 8 [Liability], 11 [Records and Accounts], 15 [Effect of Termination], 18 [Intellectual Property and

Confidentiality], Clause 22 [Notices], Clause 23 [Settlement of Disputes] and Clause 24 [Applicable Law]. Except as provided in this Clause 15.3 all rights and obligations of the Secretary of State and HS1 Co under this Agreement shall cease and be of no further force and effect upon termination of this Agreement unless otherwise provided in this Agreement.

15.4 Fair Market Value

For the purposes of Clause 15.2.4, any valuation or determination of fair market value shall be as at the date the option under Clause 15.2.4 is exercised and shall be as between a willing vendor and a willing purchaser at arm's length (and on the basis that the willing purchaser would be given all necessary information in the possession of HS1 Co, its shareholders or Associates). The value shall be as agreed by the Secretary of State and HS1 Co's financial adviser for the time being and if no agreement has been reached between the Secretary of State and HS1 Co's financial adviser within two months either party may refer the issue for determination in accordance with the Disputes Resolution Procedure.

16. Assignment and Sub-Contracting

16.1 No Assignment

HS1 Co shall not assign this Agreement nor any benefit or interest under this Agreement whether in whole or in part.

16.2 Sub-Contracting

Without prejudice to the obligations of HS1 Co under this Agreement, the operation, repair and maintenance of HS1 (including the Maintenance Works) may be sub-contracted by HS1 Co without consent. Any sub-contracting shall not relieve HS1 Co of any of its obligations or liabilities under this Agreement.

17. Change in Ownership

17.1 Ownership of HS1 Co

17.1.A1 Any Change in Ownership that would result in:

17.1.A1.1 Network Rail; and/or

17.1.A1.2 any Associate of Network Rail; and/or

17.1.A1.3 any Successors, Assignees or Nominees of Network Rail or any Associate of Network Rail; and/or

17.1.A1.4 any undertaking in which Network Rail or any Associate of Network Rail holds an Interest,

directly or indirectly:

17.1.A1.5 holding any legal, beneficial or equitable interest in any or all of the shares in HS1 Co and/or any Associate of HS1 Co (including control over the right to exercise voting rights conferred on those shares, control over the right to appoint or remove directors and control over the rights to dividends and/or any other arrangements that have or may have or which result in the same effect); or

17.1.A1.6 having the ability to direct the affairs of HS1 Co and/or any Associate of HS1 Co, whether by an interest in shares under Clause 17.1.A1.5, contract or otherwise,

may only occur with the prior written consent of the Secretary of State.

17.1.1 HS1 Co shall notify the Secretary of State as soon as reasonably practicable and in any event, 30 Business Days prior to any Change in Ownership occurring.

17.1.2 HS1 Co shall provide with the notification required under Clause 17.1.1:

17.1.2.1 information as to the identity of any proposed transferee or purchaser; and

17.1.2.2 satisfactory evidence:

(a) that HS1 Co will have:

(i) continued access to sufficient financial resources; and

(ii) continued access to sufficient expertise,

to enable HS1 Co to perform its responsibilities, duties and obligations under this Agreement after such Change in Ownership; and

(b) establishing that the proposed transferee or purchaser is a fit and proper person, including having regard to whether:

(i) the proposed transferee or purchaser or any statutory officer or representative of the proposed transferee or purchaser has been convicted of a criminal offence which is material in the context of this Agreement;

(ii) the proposed transferee or purchaser should reasonably be excluded on the grounds of national security; and

(iii) the proposed transferee or purchaser is incorporated or domiciled in, or controlled from, a country which is, or the proposed transferee or purchaser is otherwise, the subject of economic or security sanctions imposed by the United Kingdom.

17.2 Request for Information

The Secretary of State may, not more than twice in any Year, or at any time when an Event of Default is outstanding, require HS1 Co to notify him, as soon as reasonably practicable and in any event within 20 Business Days of receipt of the Secretary of State's request for details of any Change in Ownership.

17.3 Change in Ownership

17.3.1 No Change in Ownership may occur unless HS1 Co shall have provided to the Secretary of State the information and evidence specified in Clause 17.1.2 save that HS1 Co shall not be obliged to provide the evidence specified in Clause 17.1.2.2(a) in the circumstances described in Clause 17.3.2.

17.3.2 HS1 Co shall not be obliged to comply with paragraph 17.1.2.2(a) with respect to a proposed transfer or purchase of the interest of a Minority Shareholder where HS1 Co has already provided satisfactory evidence in respect of a Controlling Shareholder in accordance with Clause 17.1.2.2(a) and such evidence continues to be satisfactory at the time of notification of the proposed transfer or purchase.

17.3.2B HS1 Co shall not be obliged to comply with paragraph 17.1.2.2(b) with respect to a proposed Change of Ownership where the Secretary of State has provided prior written consent to such Change of Ownership under Clause 17.1.A1.

17.3.3 If the Secretary of State does not respond in writing to a notice given by HS1 Co in accordance with Clause 17.1 above within 30 Business Days of such notice, HS1 Co will be deemed to have provided the information specified in Clause 17.1.2 in accordance with this Clause 17.

18. Intellectual Property and Confidentiality

18.1 Intellectual Property

HS1 Co shall make available to the Secretary of State or his nominee for use free of any charge to the Secretary of State or that nominee except where the same is vested in a third party in which case HS1 Co shall use all prudent commercial endeavours to procure that they are so made available:

18.1.1 all materials, documents and data of any nature acquired or brought into existence in any manner whatsoever for the purposes of:

18.1.1.1 the design, construction or commissioning of HS1, land acquisition and compensation or the operation, repair and maintenance of the of the HS1 Assets or the Ashford Assets and which might reasonably be required by the Secretary of State for the purposes of carrying out his duties under this Agreement; or

18.1.1.2 any statutory duties which the Secretary of State may have in relation to HS1 or the roads passing adjacent to or under or over it (together with all such materials and documents relating to accidents and usage); and

18.1.2 all Design Data in existence at the date of this Agreement which might reasonably be required for the purposes set out in Clause 18.1.1.

18.2 Grant of Rights

HS1 Co:

18.2.1 grants the Secretary of State free of charge an irrevocable, non-exclusive and non transferable licence (carrying the right to grant sub-licences) to use Intellectual Property which is or becomes vested in HS1 Co;

18.2.2 shall, where any Intellectual Property is vested in a third party, use all prudent commercial endeavours to procure the grant of a like licence to the Secretary of State; and

18.2.3 in the case of SCIP, grants (to the extent that the same is or becomes vested in HS1 Co) a licence as set out in Clause 18.2.1 or (to the extent that the same is or becomes vested in one or more third parties) shall use its best endeavours to procure the grant of a like licence to the Secretary of State,

in all cases solely for the purposes of (a) the Secretary of State carrying out his duties under this Agreement or any statutory duties which the Secretary of State may have in relation to HS1 and any roads referred to in Clause 18.1.1 and (b), the design or construction of HS1 or the operation, repair or maintenance of the HS1 Assets or the Ashford Assets.

18.3 Grants for Access

To the extent that any of the data, materials and documents referred to in Clause 18.1 are generated by or maintained on a computer or similar system HS1 Co shall use all prudent commercial endeavours to procure for the benefit of the Secretary of State at no charge the grant of a licence or sub-licence for any relevant software to enable the Secretary of State or his nominee to access and otherwise use the data for the purposes set out in this Agreement or following its termination for the purposes of the operation, repair or maintenance of the HS1 Assets or the Ashford Assets.

18.4 Back-Up

HS1 Co shall submit to the Secretary of State its proposals for procedures for the back-up and storage in safe custody of the data, materials and documents referred to in Clause 18.1 and the Secretary of State shall only be entitled to object if those proposals shall not accord with Best Practice. HS1 Co shall and shall cause the Contractor and any other contractor to comply with the procedures to which no objection has been raised by the Secretary of State. HS1 Co may vary its procedures for back-up and storage subject to submitting its proposals for change to the Secretary of State, who may only object on the basis set out in this Clause 18.4.

18.5 Infringement

Where a claim or proceeding is made or brought against the Secretary of State which claim or proceeding arises out of the infringement (other than infringement arising by act or default of the Secretary of State) of any Intellectual Property because of the use of any materials, plant, machinery or equipment in connection with the Maintenance Works, the HS1 Assets or the Ashford Assets or the obligations of HS1 Co as a network provider then, unless the infringement is capable of being successfully defended by the Secretary of State by virtue of the licence or sub licence granted under Clause 18.3, HS1 Co shall indemnify the Secretary of State from and against all such claims and proceedings and the provisions as to notice, consultation, payment, settlement, assistance and joinder set out in Clause 8 [Liability] shall apply.

18.6 Confidentiality

18.6.1 All information relating to HS1 may be disclosed by the Secretary of State in accordance with the FOIA.

18.6.2 Subject to Clause 18.6.1 each party shall hold in confidence all commercially and technically sensitive documents and information including, without limitation, all categories of information exempted under the FOIA and shall not publish or otherwise disclose the same except:

18.6.2.1 with the other party's written consent;

18.6.2.2 as may necessarily be required by any law, any relevant stock exchange or other competent regulatory authority, the National Audit Office, the Parliamentary Commissioner for Administration or any Competent Authority;

18.6.2.3 as the Secretary of State may require for the purpose of the Maintenance Works in the event of termination of this Agreement, subject to the provisions of Clauses 13 [Termination by the Secretary of State], 14 [Termination by HS1 Co] and 15 [Effect of Termination]; or

18.6.2.4 that which is in or enters the public domain other than as a result of a breach of the obligations imposed by this Clause 18,

provided that the provisions of this Clause 18 shall not restrict either party from passing the information to the ORR, its professional advisers or proposed or actual lenders to HS1 Co (or persons acting as security trustee to hold security on their

behalf) or rating agencies or subcontractors (including the Operator) of HS1 Co who have first agreed to be bound by the provisions of this Clause 18.6 and that HS1 Co may, subject to having made such persons aware of this Clause 18.6, pass to the proposed or actual lenders, rating agencies or to the subcontractors such documents and other information as is reasonably required by the proposed lenders, rating agencies in connection with the raising of finance for HS1 or HS1 Co or which it is obliged to supply by the terms of any funding agreements or which is required by subcontractors (including the Operator) for the performance of their obligations under the subcontracts.

18.7 Publication

Neither party shall without the prior written authority of the other, publish alone or in conjunction with any other person any articles or other material relating to any Dispute nor impart to the press or to any radio or television programme or publish on the internet any information regarding such Dispute, except and to the extent that the publication shall arise out of any statutory or regulatory obligation applicable to either of the parties or any parliamentary requirement of the Secretary of State.

19. Amendments

No alteration or amendment to this Agreement may be made except where expressly recorded in writing in the English language by a document expressed to be supplemental to this Agreement and signed by or on behalf of the parties to this Agreement and, in the case of provisions that involve a right or responsibility of the ORR as listed in Clause 4.2, with the consent of the ORR.

20. Further Assurance

Each of the parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for carrying out the provisions of this Agreement.

21. Entire Agreement

This Agreement supersedes any previous agreement, arrangement or understanding between the parties in relation to the matters dealt with in this Agreement and represents the entire understanding between the parties in relation to such matters.

22. Notices

22.1 Details

All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class pre-paid post, or leaving the same at, and (where expressly permitted by this Agreement) by email to:

If to the Secretary of State - Rail Executive – Passenger Services
Great Minster House, 33 Horseferry Road, London
SW1P 4DR

Email: an email address of a Government's
Representative

For the attention of - HS1 Concession Manager

If to HS1 Co - 5th Floor, Kings Place, 90 York Way
London
N1 9AG

Email: an email address of an HS1 representative
authorised by that organisation to act in respect of this Agreement

For the attention of - Chief Executive

If to the ORR The Office of Rail and Road,
25 Cabot Square,
London
E14 4QZ

Facsimile No: 020 7282 2040

Email: an email address of an ORR representative
authorised by that organisation to act in respect of this Agreement

For the attention of - Chief Executive

22.2 Receipt of Notices

Either party to this Agreement may change his or its (as the case may be) nominated address or email address by prior notice to the other party. Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five Business Days after mailing.

Where expressly permitted under this Agreement, notices given by email shall be deemed to have been received when the communication is first stored in the recipient's electronic mail box. The place of receipt of any notices given by email shall be deemed to be the postal address for the recipient as set out in clause 22.1 (as may be changed in accordance with clause 22.2).

23. Settlement of Disputes

23.1 Disputes Resolution Agreement

Save in respect of those matters which this Agreement provides is to be referred to the Enforcement Procedure or the Decision Making Procedure, any Dispute between the Secretary of State (including the Government's Representative on behalf of the Secretary of State) and HS1 Co shall be resolved in accordance with the Disputes Resolution Agreement.

23.2 Non-Exclusive Jurisdiction

Subject to Clause 23.1, any Dispute shall, unless the parties shall otherwise agree, be subject to the non-exclusive jurisdiction of the Courts of England and Wales.

24. Applicable Law

This Agreement shall be governed and construed in accordance with the laws of England and Wales.

25. Miscellaneous

25.1 Single Instruments

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

25.2 No Third Party Beneficiary

25.2.1 Other than as indicated in Clauses 4, 8.3 and 25.2.2, no person who is not a party to this Agreement has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

25.2.2 The ORR shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce such rights as have been granted to it under this Agreement.

25.3 Severability

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby provided that any such illegality, invalidity or unenforceability shall not deprive this Agreement from having its substantive effect.

IN WITNESS WHEREOF this Agreement has been executed and delivered as a Deed the day and year first before written.

The Corporate Seal of the)
SECRETARY OF STATE FOR)
TRANSPORT)
hereunto affixed is)
authenticated by)

.....
Authorised by the Secretary of State
for Transport

EXECUTED AS A DEED by)
HS1 LIMITED)
acting by:)

.....
Director

.....
Director/Secretary

Schedule 1

Definitions, Construction And Interpretation

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Schedule 1

Definitions, Construction and Interpretation

Section 1

Definitions

"Access Charges Review": means a Periodic Review or an Interim Review;

"Agreement": means this Concession Agreement made between the Secretary of State and HS1 Co;

"Agreement for Lease": means the agreement for the grant of the HS1 Lease and the Ebbsfleet Underlease between the Secretary of State and HS1 Co, such agreement having the same date as this Agreement;

"Applicable Threshold Amount": means an aggregate of £6 million per Control Period expressed in month_[4] 2009 prices;

"Ashford Assets" means Ashford International Station (including all works in relation to the design, construction, commissioning and completion of Ashford International Station), Ashford Plant and all other assets which are or come into the ownership of HS1 Co or a Subsidiary of HS1 Co to the extent that the same are used or required for the performance by HS1 Co of its obligations under this Agreement or under the Ashford Leases in relation to Ashford International Station;

"Ashford Deed" means the supplemental deed given by the station facility owner in favour of the Secretary of State in connection with the repair and renewal of Ashford International Station;

"Ashford International Station": means the railway station (including the facilities set out in paragraph 4 of Appendix 1 to Schedule 3 [Minimum Operational Standards]) built at Ashford, Kent, for International Services as part of HS1 and which is the subject of the Ashford Leases;

"Ashford Leases": means:

- (a) an underlease of Ashford International Station by a lease the latest form of which at the Operative Date is that attached as Appendix 4 of the Agreement for Lease or where the lease has been entered into, that document; and
- (b) an underlease of the island platforms at Ashford International Station by a lease the latest form of which at the Operative Date is attached as Appendix 5 of the Agreement for Lease or where the lease has been entered into, that document;

"Ashford Plant": means machinery, apparatus, equipment, materials and the like intended to form or forming part of Ashford International Station including all maintenance equipment which may or may not be mounted on rail track but excluding all rolling stock;

"Associate": means in respect of a relevant company, a company which is a Subsidiary, Holding Company or Subsidiary of the Holding Company of that relevant company and/or an undertaking in which such company directly or indirectly holds a majority of the voting rights or is otherwise able to control directly or indirectly the composition of, or the votes of, the majority of the management of that undertaking by virtue of any powers conferred by any agreement or other document regulating the affairs of such undertaking, and a company shall be treated, for the purposes only of the membership requirements contained in section 1159(1)(a) and (c) of the Companies Act 2006, as a member of another company even if its shares in that other company are registered in the name of its nominee, or of another person (or its nominee) whether by way of security or in connection with the taking of security;

"Base Senior Debt Termination Amount": means:

- (a) all amounts outstanding at the date of termination, including interest and Default Interest accrued as at that date, from HS1 Co to the Senior Lenders in respect of Third Party Borrowing; and
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs to the extent such amounts are reasonably 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, payable by HS1 Co to the Senior Lenders as a result of a prepayment in respect of Third Party Borrowing or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement, subject to HS1 Co and the Senior Lenders mitigating all such costs to the extent reasonably possible;

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (c) all credit balances on any bank accounts held by or on behalf of HS1 Co on the date of termination;
- (d) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to HS1 Co as a result of prepayment of amounts outstanding in respect of Third Party Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement, to the extent that all such amounts are reasonably 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; and
- (e) all other amounts received by the Senior Lenders on or after the date of termination and before the date on which any compensation is payable by the Secretary of State to HS1 Co as a result of enforcing any other rights they may have;

"BCP": means Blue Circle Properties Limited whose registered office is at 84 Eccleston Square London SW1V 1PX;

"Best Practice": means in respect of HS1 Co the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably be expected from a skilled and experienced infrastructure manager engaged in the provision of high speed railway infrastructure;

"Business Day": means a day other than a Saturday or Sunday on which banks are open generally for business in the City of London;

"Capability Requirements": means the capability requirements for HS1 as defined in paragraph 1.3 of Schedule 3 [Minimum Operational Standards];

"Capital Expenditure": means any capital expenditure which falls to be treated as capital expenditure in accordance with the generally accepted accounting principles in the United Kingdom from time to time;

"Change in Circumstances": has the meaning given to it in paragraphs 2 and 3 [Change in Circumstances with Risk Sharing and Change in Circumstances Leading to Termination respectively] of Schedule 2;

"Change in Law": means any of the following occurring after the Operative Date:

- (a) the enactment of any new law or Directive of a Competent Authority;

- (b) the modification of any existing law or Directive of a Competent Authority except to the extent that such modification permits existing conditions or arrangements to be extended upon the same terms but for a longer period; and
- (c) a change in interpretation of the law or Directive of a Competent Authority binding on HS1 Co;

"Change in Ownership": means:

- (a) any sale, assignment, transfer or other disposal of any legal, beneficial or equitable interest in any or all of the shares in HS1 Co and/or of any Associate of HS1 Co (including the control over exercise of voting rights conferred on those shares, control over the right to appoint or remove directors and control over the rights to dividends); and/or
- (b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above;

"Channel Tunnel": means the existing fixed link under the English Channel between the southern portal at the Department of Pas-de Calais in France and the northern portal in the County of Kent in England together with the terminal areas associated therewith;

"Charging Framework": means the charging framework set out in Schedule 4 [Charging Framework];

"Combined Station": means a station to be used for both international and domestic passengers;

"Companies Acts": means the Companies Act 1985 and the Companies Act 2006;

"Competent Authority": means any national or supra-national agency, authority, inspectorate, Minister, Ministry, Court, or tribunal (whether autonomous or not) of the United Kingdom or any part of it or of the European Union (but not any other Member State of the European Union) including, but not limited to, the United Kingdom Parliament and any regional or local authority of the United Kingdom which has jurisdiction over HS1 Co and the subject matter of this Agreement but (for the avoidance of doubt) not including Network Rail and any successors to it in relation to the operation of the existing railway network in Great Britain;

"Contractor": means the party or parties with whom HS1 Co enters into a contract or contracts for any one or more of the operation, repair and maintenance of HS1;

"Controlling Shareholder": means a shareholder or shareholders holding an interest in shares in HS1 Co giving to the shareholder or shareholders control of HS1 Co within the meaning of section 840 of the Income and Corporation Taxes Act 1988;

"Costs Efficiency Plan": has the meaning given to it in paragraph 1.1 of Schedule 10 [Asset Stewardship and Periodic Review];

"Courts": means any court which is a Competent Authority;

"CTRL Act": means the Channel Tunnel Rail Link Act 1996 as amended and supplemented by the Channel Tunnel Rail Link (Supplementary Provisions) Act 2008;

"CTRL (UK)": means CTRL (UK) Limited, a company registered and incorporated in accordance with the law of England and Wales registered under number 03578740 and having its registered office at 12th Floor, One Euston Square, 40 Melton Street, London, NW1 2FD;

"Decision Making Procedure": means the procedure set out in paragraph 1 of Schedule 8 [Decision Making and Enforcement Procedure];

"Default Interest" means any increased margin that is payable to the Senior Lenders or which accrues as a result of any payment due to the Senior Lenders not being made on the date on which it is due;

"Default Termination Compensation Amount": means the amount determined in accordance with Clause 14.2 [Default Termination Compensation Amount];

"Design Data": means all specifications, plans, drawings, graphs, sketches, models and other documents prepared or to be prepared by or on behalf of LCR, HS1 Co or any Associate of either or both LCR and HS1 Co which relate to the design or construction, commissioning or completion of HS1 or the operation, repair and maintenance of the HS1 Assets and the Ashford Assets;

"Directive": means any present or future Legislation, directive, regulation, requirement, instruction, direction, guidance, judgment, award or rule of any Competent Authority binding on one or more of the parties and includes any modification, extension or replacement thereof for the time being in force;

"Dispute": means a difference or dispute of whatsoever nature arising out of or in connection with this Agreement;

"Disputes Resolution Agreement": the agreement between the Secretary of State, LCR, Railtrack Group Plc and others dated 18th February 1999 providing for the resolution of disputes arising out of or in connection with a number of agreements relating to HS1 in accordance with the disputes resolution procedure set out in Schedule 8 thereto, as amended from time to time;

"Disputes Resolution Procedure": means the procedures set out in the Disputes Resolution Agreement for the resolving of disputes;

"Domestic Services": means domestic railway passenger services;

"Ebbsfleet Development Agreement": means the agreement between the Secretary of State, BCP and Blue Circle Industries plc dated 8th December 1994 entitled "Ebbsfleet Development Agreement" and novated to LCR on 31st May 1996;

"Ebbsfleet Master Agreement": means the agreement between the Secretary of State and BCP dated 8th December 1994 entitled "Master Agreement";

"Ebbsfleet Station": means the railway station (including the facilities set out in paragraph 3 of Appendix 1 to Schedule 3 [Minimum Operational Standards]) built at Gravesham, Kent for International Services as part of HS1;

"Ebbsfleet Underlease": means the underlease of Ebbsfleet Station to be granted by the Secretary of State to HS1 Co in accordance with the provisions of the Agreement for Lease to be entered into between the Secretary of State and HS1 Co on the Operative Date;

"EdF Assets": has the meaning set out in paragraph 1.1 of Schedule 10 [Asset Stewardship and Periodic Review];

"Enforcement Procedure": means the procedure set out in paragraphs 2 and 3 of Schedule 8 [Decision Making and Enforcement Procedure];

"Equity": means the issued ordinary share capital of HS1 Co;

"Equity Amount": means the Equity Cash Flows discounted at the Market Equity IRR;

"Equity Cash Flows": means the forecast annual cash flows of HS1 Co (including all revenues and costs) established by an independent technical financial adviser appointed jointly by HS1 Co and the Secretary of State based on the Relevant Assumptions minus the Senior Debt Service Cash Flows;

"Estimated Change in Operating Costs": means in relation to Clause 10 [Change in Circumstances and Government's Change], the aggregate of any estimated increase in operating, repairs and maintenance costs of the HS1 Assets less the aggregate of any estimated reduction in operating, repairs or maintenance costs of the HS1 Assets and net of any increase in revenues;

"EUKL": means Eurostar (U.K.) Limited (formerly called European Passenger Services Limited or EPSL), a company incorporated in England and Wales under number 02462001 and having its registered office at Eurostar House, Waterloo Station, London, SE1 8SE;

"EUKL Track Access Agreement": means any agreement from time to time between EUKL and HS1 Co for track access on HS1 for the operation of international passenger services;

"Event of Default": means in relation to HS1 Co the occurrence of any of the events specified in Clause 12.1 [Events of Default];

"Expiry Date": means 31 December 2040;

"Final Decision": has the meaning given to it in paragraph 1.4 of Schedule 8 [Decision Making and Enforcement Procedure];

"Final Order": has the meaning given to it in paragraph 2.1 of Schedule 8 [Decision Making and Enforcement Procedure];

"Final Permit to Use": means the final permit to use issued to LCR on 27 May 2008 in respect of the completion of HS1;

"FOIA": means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department to such Act;

"Framework Agreement": means the agreement of that name dated 9 September 1998 (as amended by letters dated 22 December 1998 and 14 January 1999 and the Supplemental Agreement dated 21 September 2001) entered into between inter alia the Secretary of State, EUKL, LCR, Railtrack PLC and URL;

"Freight Services": means international and domestic freight railway services;

"Government": means the government of the United Kingdom and includes the Secretary of State;

"Government's Change": means a change of any kind to the subject matter of this Agreement proposed by the Secretary of State in accordance with Clause 10.6 [Request for Government's Change] and which is not a Paragraph 2 Change or a Paragraph 3 Change;

"Government's Representative": means such person(s), firm(s) or company(ies) that the Secretary of State may appoint to be his representative(s) or any substitute as may be appointed from time to time pursuant to Clause 4.1 [Government's Representative];

"Gross Negligence": means the wilful failure by one party to perform its obligations, or any voluntary act or omission of that party in reckless disregard of the consequences to the other party or any third party;

"Holding Company": shall be defined as in Part 38 of the Companies Act 2006;

"HS1": means the Channel Tunnel rail link between London St Pancras Station and Cheriton, which for the avoidance of doubt includes the HS1 Stations, as contemplated by the CTRL Act and the orders under TWA for Stratford Station, the works related to the use of Stratford Station as a Combined Station on the basis of a Stratford Box, the works carried out in relation to connections to the North London Line and the approach to London St Pancras Station and in respect of Boarley Lane, Boxley in Kent;

"HS1 Assets": means:

- (a) the HS1 Works;

- (b) Plant;
 - (c) the HS1 Stations;
 - (d) the HS1 Lands; and
 - (e) all other assets which are or come into the ownership of HS1 Co to the extent that the same are used or required for the performance by HS1 Co of its obligations under this Agreement,
- and includes the HS1 Railway Infrastructure;

"HS1 Concession": means the concession for the design, construction, financing, operation, repair and maintenance of HS1 in accordance with the provisions of this Agreement until (and including) the Expiry Date or earlier termination;

"HS1 Co's General Duty": has the meaning given to it in paragraph 1.1 of Schedule 10 [Asset Stewardship and Periodic Review];

"HS1 Co's Share": means:

- (a) in case of a Paragraph 2 Change satisfying the condition specified in Clause 10.2.3.2,
 - (i) an amount equal to 30% of the OMRC for the Control Periods in question; and
 - (ii) 20% of the amount by which the Estimated Change in Operating Costs would exceed 30% of the OMRC (as that expression is defined in Schedule 10 [Asset Stewardship and Periodic Review]) and without taking account of the consequences of the Paragraph 2 Change) for the Control Periods in question;or
- (b) in any other case, 20% of the relevant Estimated Change in Operating Costs, Loss of Revenue and/or Capital Expenditure less any Capital Expenditure that is no longer required as a result of the Paragraph 2 Change relating to any proposed Paragraph 2 Change other than in relation to paragraph 2.8 [Partial Sequestration] of Schedule 2 [Change in Circumstances] where HS1 Co's Share shall be zero,

up to a maximum aggregate amount borne by HS1 Co in any Control Period equal to the Applicable Threshold Amount;

"HS1 Co Security Trustee": means any person acting as a trustee or agent for creditors of HS1 Co from time to time;

"HS1 Co TSI Derogation": means any of the derogations granted by the Secretary of State in relation to HS1 pursuant to Article 7 of the Interoperability Directive from the requirement to comply with TSIs which are set out in the CTRL Section 1 Infrastructure Register R-SA-SA0042-080UKO Rev 01 dated 31 October 2006 and the CTRL Section 2 Infrastructure Register R-SA-SA00518-08-UNO-00 Rev 00 dated 17 August 2007;

"HS1 Freight Access Terms": means the HS1 Freight Access Terms from time to time;

"HS1 Lands": means land (including wayleaves, rights of way or access or interest in and rights in relation to land) necessary for the performance by HS1 Co of its obligations under this Agreement and which is the subject of the Agreement for Lease but which, for the avoidance of doubt, excludes the Ashford Assets;

"HS1 Lease": means the lease of HS1 to be granted by the Secretary of State to HS1 Co in accordance with the provisions of the Agreement for Lease to be entered into between the Secretary of State and HS1 Co on the Operative Date;

"HS1 Passenger Access Terms": means the HS1 Passenger Access Terms from time to time;

"HS1 Railway Infrastructure": has the meaning given to it in paragraph 1.1 of Schedule 10 [Asset Stewardship and Periodic Review];

"HS1 Station Access Conditions": means the High Speed 1 Station Access Conditions from time to time;

"HS1 Stations": means any or all of London St Pancras Station, Stratford Station or Ebbsfleet Station, as the context shall require;

"HS1 Works": means works in relation to the design, construction, commissioning and completion of HS1 defined in the Construction Minimum Requirements and the Construction Proposals of the LCR Development Agreement;

"Intellectual Property": means all registered or unregistered trade marks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unregistered designs, confidential information, know-how or other intellectual property rights subsisting in or relating to the Design Data;

"Interest": means an interest in:

- (a) the equity share capital or other ownership of an undertaking;
- (b) the voting rights conferred on the equity share capital of an undertaking; and/or
- (c) the composition of, or the voting rights exercised by, the management board of an undertaking;

"Interim Review": has the meaning given to it in Paragraph 1.1 of Schedule 10 [Asset Stewardship and Periodic Review];

"International Services": means international railway passenger services;

"Interoperability Directive": means a means Council Directive 96/48/EC of 23 July 1996 on the Interoperability of the Trans-European High Speed Rail System;

"IRR": means the internal rate of return;

"Key Contracts": means all contracts entered into by HS1 Co from time to time and necessary for the operation, repair and maintenance of HS1 in accordance with the provisions of this Agreement and the track and station access agreements from time to time;

"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 enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom;

"London St Pancras Station": means the railway station (including the facilities set out in paragraph 1 of Appendix 1 to Schedule 3 [Minimum Operational Standards]) built at London St Pancras for International Services and Domestic Services as part of HS1;

"Loss of an HS1 Co TSI Derogation": means the occurrence of the Paragraph 2 Change described in paragraph 2.9 of Schedule 2 [Loss of TSI Derogations];

"Loss of Revenue": means any future loss of revenues arising in respect of the remaining term of this agreement, arising from a Paragraph 2 Change or a Government's Change (including any reduction in the investment recovery charge element of access charges levied in accordance with Schedule 4, car parking revenues, retail revenues and advertising revenues) net of any related reduction in costs arising from the same Paragraph 2 Change or (as the case may be) Government's Change;

"Losses": means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands;

"LSER Track Access Agreement": means any agreement from time to time between LSER (or any successor to LSER in respect of any franchised passenger services operated by LSER involving track access on HS1) and HS1 Co for track access on HS1 for the operation of domestic passenger services;

"Maintenance Contract": means an agreement or agreements between HS1 Co and its Contractor or Contractors for all or part of the Maintenance Works;

"Maintenance Works": means any works for the operation, repair and maintenance of the HS1 Assets or the Ashford Assets;

"Market Equity IRR": means the average of two estimates of the market equity IRR, reflecting the IRR at which the Equity Cash Flows could be sold on an open market basis and taking into account the amount of Third Party Borrowings, established by two independent financial advisers appointed jointly by HS1 Co and the Secretary of State;

"Minimum Operational Standards": means the continuing minimum requirements in relation to operational issues, including in relation to infrastructure capability, performance and stations, as set out in Schedule 3 [Minimum Operational Standards];

"Minority Shareholder": means a shareholder owning less than 5% of the legal, beneficial or equitable interest in any or all of the shares in HS1 Co (including the control over exercise of voting rights conferred on those shares, control over the right to appoint or remove directors and control over the rights to dividends);

"Network Rail": means Network Rail Infrastructure Limited, a company incorporated in England and Wales under number 02904587 and having its registered office at Kings Place, 90 York Way, London N1 9AG;

"Non-Default Termination Compensation Amount": means the amount determined in accordance with Clause 14.3 [Non-Default Termination Compensation Amount];

"Notice Date": means the later of the date of termination and the date that the Default Termination Compensation Amount or the Non-Default Termination Compensation Amount (as the case may be) is agreed upon or determined pursuant to Clause 14.4 [Payment of Compensation];

"NR(HS)": means Network Rail (High Speed) Limited (formerly Network Rail (CTRL) Limited), a company incorporated in England and Wales under number 04434562 and having its registered office at Kings Place, 90 York Way, London N1 9AG;

"OMR": means the operation, maintenance, Renewal and Replacement of HS1 Railway Infrastructure;

"OMRC": has the meaning given to it in paragraph 1.1 of Schedule 10 [Asset Stewardship and Periodic Review];

"Operative Date": means 14th August 2009;

"Operator": means any operator of HS1 to whom HS1 Co subcontracts the operation, maintenance and renewal of HS1 from time to time and who, at the date of this Agreement as amended, is NR(HS);

"Operator Agreement": means the agreement dated 28 September 2003 between CTRL (UK), HS1 Co and NR(HS), as such agreement may be amended and restated at any time and from time to time (or any replacement thereof);

"Operator Direct Agreement": means the agreement known as the 'Operator Direct Agreement' entered into by HS1 Co, the Operator, the Secretary of State and Network Rail on 14 May 2010, as such agreement may be amended and restated at any time and from time to time (or any replacement thereof);

"ORR": means the Office of Rail and Road which has the meaning given to it in Section 15 of the Railways and Transport Safety Act 2003 and shall include all successors given the role of regulatory body under the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016;

"ORR's Appointment": means the appointment of the ORR to carry out functions, duties, rights and obligations in relation to the HS1 Concession in accordance with Clause 4.2 thereof;

"Paragraph 2 Change": means any Change in Circumstances referred to in paragraph 2 of Schedule 2 [Change in Circumstances with Risk Sharing];

"Paragraph 3 Change": means any Change in Circumstances referred to in paragraph 3 of Schedule 2 [Change in Circumstances Leading to Termination];

"Periodic Review": has the meaning given to it in paragraph 1.1 of Schedule 10 [Asset Stewardship and Periodic Review];

"Plant": means machinery, apparatus, equipment, materials and the like intended to form or forming part of HS1 including all maintenance equipment which may or may not be mounted on rail track but excluding all rolling stock;

"Project Record": means the Design Data relating to the design, construction, commissioning or completion of HS1;

"Projectwise": means the information technology system for the storage of data about the design, construction, maintenance and operation of HS1 as required by Clause 11 [Record and Accounts] and Schedule 6 [Records];

"Provisional Order": has the meaning given to it in paragraph 2.2 of Schedule 8 [Decision Making and Enforcement Procedure];

"Railtrack Group PLC": means Railtrack Group PLC a company liquidated on 18 October 2002, formerly incorporated in England and Wales under number 02904614 and having its registered office at Hill House, 1 Little New Street, London EC4A 3TR;

"Railways Regulations": means the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 [SI 2016/645];

"Relevant Assumptions": means the assumptions that: the sale of HS1 Co is on the basis that the Paragraph 3 Change giving rise to the termination of this Agreement pursuant to Clause 10.3 [Paragraph 3 Change] has not occurred and that this Agreement has not been terminated; that the sale is on a going concern basis; that no restrictions exist on the transfer of share capital; but that otherwise the actual state of affairs of HS1 Co and HS1 is taken into account;

"Relevant Change in Law": has the meaning given to it in paragraph 2.1 of Schedule 2 [Change in Circumstances with Risk Sharing];

"Relevant Change in Taxation": has the meaning given to it in paragraph 2.2 of Schedule 2 [Change in Circumstances with Risk Sharing];

"Relevant Taxes": means all present and future taxes, levies, imposts, duties, fees, deductions, withholdings or charges of whatever nature (including without limitation corporation tax, income tax, value added tax, uniform business rate and stamp duty) payable at the instance of or imposed by any Competent Authority;

"Relevant Termination Event": means an Event of Default specified in Clause 12.1.6 of this Agreement which has occurred and is continuing and which has arisen from the breach or non-performance by an Operator of its obligations under an Operator Agreement;

"Renewal and Replacement": has the meaning given to it in paragraph 1.1 of Schedule 10 [Asset Stewardship and Periodic Review];

"Replacement Period": means a period of time (to be agreed between the Secretary of State and the HS1 Co Security Trustee) commencing on the date on which the Relevant Termination Event first occurred the duration of which shall be reasonably sufficient to enable HS1 Co and/or the HS1 Co Security Trustee to terminate the relevant Operator Agreement and find a replacement Operator or make arrangements for HS1 Co or an HS1 Co Associate to carry out the relevant Operator Agreement services itself;

"RPI": means the definition contained in Section 2 of Schedule 4 [Charging Framework];

"Safety Authorisation": means an authorisation issued by the ORR pursuant to regulation 10 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"SCIP": means the Intellectual Property (including but not limited to the software and source codes) relating to the signalling and control systems for HS1;

"Section 1": means that part of HS1 between Cheriton in Kent to Fawkham Junction;

"Section 2": means that part of HS1 between Southfleet and London St Pancras Station;

"Senior Debt Service Cash Flows": means the annual interest and principal payments in relation to the Third Party Borrowings;

"Senior Lender" means a person providing finance to HS1 Co under Third Party Borrowing;

"Specified Upgrade": has the meaning set out in paragraph 1.1 of Schedule 10 [Asset Stewardship and Periodic Review];

"Stratford Box": means the structure at Stratford Station within a retained cutting as described in Work No. 6 of Schedule 1 to the CTRL Act 1996 with provision for two dedicated platforms for International Services and two separately dedicated platforms for domestic rail services, the general location of which is indicated on Drawing No. HOOEX/5623200/0001;

"Stratford Station": means the railway station (including the facilities set out in paragraph 2 of Appendix 1 to Schedule 3 [Minimum Operational Standards]) built at Stratford E15 for International Services and Domestic Services as part of HS1;

"Sub-Contractor Breakage Costs": means Losses that have been or will be reasonably and properly incurred by HS1 Co as a direct result of the termination of this Agreement, including:

- (a) Losses incurred in relation to any materials or goods ordered or Maintenance Contracts or sub-contracts placed that cannot be cancelled or terminated, as the case may be, without such Losses being incurred;
- (b) any expenditure incurred in anticipation of future performance of obligations under this Agreement;
- (c) the cost of demobilisation including the cost of any relocation of equipment used in connection with the performance of obligations under this Agreement; and
- (d) redundancy payments,

but only to the extent that:

- (e) 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 (it being acknowledged and agreed that
 - (i) the Operator Agreement; and
 - (ii) the EdF Agreements (as at the Operative Date),are so consistent); and
- (f) HS1 Co and the relevant Contractor or sub-contractor has used its reasonable endeavours to mitigate the Losses;

"Subsidiary": shall be defined as in Part 38 of the Companies Act 2006;

"Successors, Assignees or Nominees of Network Rail": means any person other than Network Rail from time to time holding the network licence in respect of the NRIL Network;

"Temple Mills Depot": means the train maintenance depot in Leyton, East London;

"Third Party Borrowing": means any advance to HS1 Co under any senior financing agreements and any interest and other amounts accrued or payable under the terms of such senior financing agreements and, for the avoidance of doubt, excludes any debt financing agreements or other documents through which equity investors have invested equity in HS1 Co in the form of subordinated debt;

"Train Performance Report" means the written report produced in accordance with paragraph 6.2 of Schedule 3 [Minimum Operational Standards];

"Train Service": means an International Service, a Domestic Service or (as the case may be) a Freight Service;

"TSI": means a technical specification for interoperability as defined in paragraph (g) of Article 2 of the Interoperability Directive;

"TWA": means the Transport and Works Act 1992;

"Vendor Due Diligence Information": means vendor due diligence information relating to HS1 Co and its interest in the HS1 Concession provided by HS1 Co and/or its directors or employees to potential purchasers prior to any assignment of a benefit or interest under this Agreement or any Change in Ownership;

"URL": means Union Railways Limited, a company incorporated in England and Wales under number 03774536 and having its registered office at 3rd Floor, 183 Eversholt Street, London, NW1 1AY; and

"Year": means, in the case of the first Year, the period from the Operative Date to 31 March the following calendar year and, thereafter, the period from 1 April in a calendar year to 31 March in the following calendar year except in the case of the last Year which shall be the period from 1 April to the date of termination of this Agreement or the Expiry Date (as appropriate).

Section 2

Construction and Interpretation

1. The headings and marginal notes and references to them in this Agreement shall not be deemed to be part of this Agreement or be taken into consideration in the interpretation or construction of this Agreement.
2. Clause numbers in this Agreement quoted for reference purposes use a number without a "point" when reference is being made to all the sub-Clauses having that number before the "point" (e.g. "Clause 9" refers to Clause 9.1 to Clause 9.5 inclusive). A reference made using a "point" refers to that numbered Clause (e.g. "Clause 9.4" refers to Clause 9.4). A reference using two or more "points" refers only to that numbered Clause (e.g. "Clause 9.2.2" refers to Clause 9.2.2). A reference to Recitals is a reference to a recital at the beginning of this Agreement.
3. References to Sections, Appendices, Annexes, paragraphs and sub-paragraphs are references to Sections, Appendices, Annexes, paragraphs and sub-paragraphs contained in Schedules of this Agreement.
4. Words importing persons or parties shall include firms, partnerships, corporations and any organisations having legal capacity. Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
5. Wherever in this Agreement provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, certificate or determination shall be in writing and the words "notify", "endorsed", "consent", "approved", "certified", or "determined" shall be construed accordingly.
6. This Agreement is an English text agreement and shall be construed and interpreted accordingly. All correspondence, drawings, Design Data, test reports, certificates, specifications and information shall be entirely in the English language. All operating and maintenance instructions, name and rating plates, identification labels, instructions and notices to the public and staff and all other written and printed matter required for operation and maintenance shall be executed in the English language, and in such other languages as HS1 Co shall think appropriate.
7. References to any enactment (including any subordinate legislation) are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending the same provided that the provisions of this Paragraph 7 shall not affect the operation of paragraphs 2 and 3 of Schedule 2 which paragraphs shall operate by reference to a Relevant Change in Law on the basis set out in such paragraphs.
- 8.1 References to amounts or sums being expressed in month_m[YEAR] prices are references to amounts or sums which have been adjusted to exclude the effects of inflation after that month as measured by changes in the RPI from the level published in month_{m+1}[YEAR] for the month of month_m[YEAR]. Month_m[YEAR] prices shall be calculated by applying the following formula:

$$R_{\text{month } m[\text{YEAR}]} = R_n \times \frac{RPI_{\text{month } m+1[\text{YEAR}]}}{RPI_n}$$

- 8.2 Where it is necessary to calculate the value of an amount or sum, expressed in month_m[YEAR] prices, in a month other than month_m[YEAR] so as to include the effects of inflation after that month as measured by changes in the RPI from the level published in month_{m+1}[YEAR], the following formula shall be used:

$$R_n = R_{\text{month } m[\text{YEAR}]} \times \frac{RPI_n}{RPI_{\text{month } m+1[\text{YEAR}]}}$$

8.3 For each of the formula set out in paragraphs 8.1 and 8.2:

$R_{\text{month } m[\text{YEAR}]}$ = the relevant amount or sum expressed in month_m[YEAR] prices;

n = the calendar month in respect of which the month_m[YEAR] price comparison is to be made;

R_n = the actual amount or sum pertaining in month n ;

$RPI_{\text{month } m+1[\text{YEAR}]}$ = the RPI published in month_{m+1}[YEAR] for the month of month_m[YEAR];

RPI_n = the RPI estimated by the Secretary of State on the basis of the most recently published RPI, in respect of the calendar month in which n occurs;

M = applicable calendar month; and [YEAR] = applicable year.

Where the RPI_n for any payment calculation differs from the published RPI in respect of the calendar month in which the payment is made, an adjustment will be made to the next payment to reflect the difference between RPI_n and the actual RPI published in respect of the month in which the payment was made (or, if there is no such payment, then a balancing payment shall be made, as appropriate, as soon as practicable following publication of the actual RPI in respect of such month).

9. References to any agreement or documents include (subject to all relevant approvals) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned.
10. Any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation.
11. For the avoidance of doubt references to "repairs" include renewals and replacements (and include, where applicable, Renewals and Replacements).
12. The words in this Agreement shall bear their natural meaning. The parties have had the opportunity to take legal advice on the Agreement and no term shall, therefore, be construed contra proferentem.
13. Where it is necessary to calculate a nominal interest rate from a real interest rate provided in this Agreement for the purposes of determining an amount of interest payable, then the following formula shall be used:

$$I = \left(\frac{RPI_j}{RPI_j - 12} \times (100 + r) - 100 \right)$$

where:

- I = the nominal percentage annual interest rate to be applied in the calculation of the relevant interest payment;
- RPI_j = the RPI published or which is to be published in month_{j+1} for the preceding month_j;
- RPI_{j-12} = the RPI published or which is to be published in month_{j-11} for the preceding month_{j-12}, being the same month in the previous year as month_j referred to above;
- r = the real percentage annual interest rate; and
- j = applicable calendar month.

14. a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation".

Schedule 2

Change In Circumstances

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Schedule 2

Change In Circumstances

1. Change In Circumstances

1.1 Classification

In this Schedule 2 there are two main categories of Change in Circumstances, those appearing in paragraph 2 [Change In Circumstances With Risk Sharing] which may give rise to financial support by the Secretary of State in accordance with Clause 10.2 and those appearing in paragraph 3 [Change In Circumstances Leading To Termination] which may give rise to termination of this Agreement in accordance with Clauses 10.3 to 10.5.

2. Change In Circumstances With Risk Sharing

The following are Changes in Circumstances which lead to risk sharing and may give rise to a requirement for additional financial support by the Secretary of State in accordance with Clause 10.2:

2.1 Relevant Change in Law

To be a Relevant Change in Law, a Change in Law must:

- 2.1.1 apply to the provision, operation, maintenance or construction of railway infrastructure in the United Kingdom by HS1 Co;
- 2.1.2 not arise from the CTRL Act as at the Operative Date;
- 2.1.3 not apply adversely to the competitors of HS1 Co who provide, operate, maintain or construct railway infrastructure for use by high speed rail services or by international passenger services;
- 2.1.4 be intended to treat HS1 Co less favourably by resulting in greater obligations applying to HS1 Co as against others carrying out the business set out in paragraph 2.1.3 above;
- 2.1.5 not bring into full force and effect standards which (save for requirements to comply with future Changes in Law) are required by or are referred to in this Agreement;
- 2.1.6 not bring into full force and effect any law, interpretation or Directive:
 - 2.1.6.1 (whether in final form or not) relating directly or indirectly to railway undertakings in the form published (whether in whole or in draft or by way of amendment) by the relevant Competent Authority as at the Operative Date;
 - 2.1.6.2 made, to a significant extent, as a consequence of the wilful default or negligence of HS1 Co or any of its Associates;
 - 2.1.6.3 of any Competent Authority relating to security; or
 - 2.1.6.4 (without prejudice to paragraph 2.7 [Safety]) of any Competent Authority relating to safety; and
- 2.1.7 not arise from the ORR exercising any of its statutory functions or any of its rights and responsibilities under or by virtue of this Agreement but excluding its safety functions

transferred to the ORR pursuant to the Railways Act 2005 by means of the Railways Act 2005 (Amendment) Regulations 2006 [SI 2006/556].

2.2 Relevant Change in Taxation

To be a Relevant Change in Taxation, a Change in Law must:

- 2.2.1 relate to Relevant Taxes;
- 2.2.2 apply to the provision, operation, maintenance or construction of railway infrastructure in the United Kingdom by HS1 Co;
- 2.2.3 be intended to treat HS1 Co less favourably than others carrying out the business set out in paragraph 2.2.4 below by raising additional revenue from HS1 Co; and
- 2.2.4 not apply adversely to the competitors of HS1 Co who provide, operate, maintain or construct railway infrastructure for use by high speed rail services or by international passenger services.

2.3 Delay in Statutory Instruments

Any statutory instrument to be made pursuant to the CTRL Act and/or required to implement the Project is delayed.

2.4 Hostilities

War, civil war, hostilities (whether declared or undeclared), invasion, armed conflict, act of foreign enemy or terrorism either within England or the Channel Tunnel and affecting the construction, maintenance, operation or use of HS1 or the exercise by the Secretary of State of his powers under Sections 118 and 119 of the Railways Act 1993 and which directly causes HS1 Co to be unable to comply with all or a material part of its obligations under the Agreement.

2.5 Civil Disorder

Rebellion, revolution or the threat of any such acts in each case (but for the avoidance of doubt this does not include terrorism) within England or the Channel Tunnel and affecting the construction, maintenance, operation or use of HS1 and which directly causes HS1 Co to be unable to comply with all or a material part of its obligations under the Agreement.

2.6 Other Force Majeure

Nuclear, chemical or biological contamination (unless the cause of the contamination is the result of actions or breach by HS1 Co or its Contractors) or pressure waves caused by devices travelling at supersonic speeds and affecting the construction, maintenance, operation or use of HS1 and which directly causes HS1 Co to be unable to comply with all or a material part of its obligations under the Agreement.

2.7 Safety

The bringing into force after the Operative Date by any relevant Competent Authority of any Directive which would increase the requirements, standards or procedures above the levels which might reasonably be expected from the Safety Authorisation.

2.8 Partial Sequestration

The nationalisation, sequestration, requisitioning or seizing by Government or any other Competent Authority of part only of the HS1 Assets, the Ashford Assets, Equity or of any of the

shares or other equity in HS1 Co otherwise than as a result of any breach or failure on the part of HS1 Co or any Associate to comply with legislation relating to taxation, social security payments, rates or other governmental or municipal levies or imposts or other legislation breach of which would otherwise permit Government to nationalise, sequester, requisition or otherwise seize such assets.

2.9 Loss of TSI Derogations

A determination by a Competent Authority under the Railways (Interoperability) Regulations 2006 [SI 2006/397] as amended by the Railways (Interoperability) (Amendment) Regulations 2007 [SI 2007/3386] that the whole or part of any of the HS1 Co TSI Derogations shall not apply to HS1.

3. Change In Circumstances Leading To Termination

The following are Changes in Circumstances which may lead to termination in accordance with Clauses 10.3 to 10.5:

3.1 Repudiatory Breach by the Secretary of State

The Secretary of State does an act or makes an omission which could be accepted by HS1 Co as a repudiation by the Secretary of State of this Agreement.

3.2 Total Sequestration

The nationalisation, sequestration, requisitioning or seizing of the whole of the HS1 Assets, the Ashford Assets or any material part of any of them or the Equity or of the whole of the shares or other equity in or a controlling interest in HS1 Co by the Government or by any other Competent Authority otherwise than as a result of any breach or failure on the part of HS1 Co to comply with legislation relating to taxation, social security payments, rates or other governmental or municipal levies or imposts or other legislation breach of which would otherwise permit Government to nationalise, sequester, requisition or otherwise seize such assets.

3.3 Adverse Relevant Change in Law

There is a Relevant Change in Law with the result that:

3.3.1 any of this Agreement, the Agreement for Lease and to the extent that they have been granted the HS1 Lease, the Ebbsfleet Underlease or the Ashford Leases cannot be, to a material extent, implemented in accordance with its or their terms; or

3.3.2 performance of any term of any of this Agreement, the Agreement for Lease and to the extent that they have been granted the HS1 Lease, the Ebbsfleet Underlease or the Ashford Leases becomes illegal under any United Kingdom or European Union law or Directive as it then stands so as to render impractical the performance of the HS1 Concession in the manner anticipated by this Agreement.

3.4 State Aid

Any financial assistance or other aid given pursuant to the terms of or otherwise the effect of any of this Agreement, the Agreement for Lease and to the extent that they have been granted the HS1 Lease, the Ebbsfleet Underlease or the Ashford Leases is considered by the European Commission to constitute state aid for the purposes of Article 87 of the Treaty of Rome and the European Commission requires any of that state aid to be repaid or otherwise withdrawn so that in HS1 Co's reasonable opinion its obligations under any of those agreements becomes materially more onerous as a result and/or any financial assistance or other aid given is considered by the European Commission to constitute such state aid and the European

Commission requires any of that state aid to be repaid or otherwise withdrawn so that in HS1 Co's reasonable opinion its obligations under any of those agreements becomes materially more onerous as a result.

3.5 European Court

Where the Secretary of State is required as a consequence of a finding of the European Court of Justice to set aside any of this Agreement, the Agreement for Lease and to the extent that they have been granted the HS1 Lease, the Ebbsfleet Underlease or the Ashford Leases (and so sets any one or more of them aside) or the parties agree, following receipt of a written indication of the proceedings before the European Court, that the proceedings are likely to have such a result.

3.6 European Commission / national competition authority

Where the European Commission or a national competition authority takes action under any of Articles 81, 82 of the Treaty of Rome, equivalent domestic legislation or Regulation 1017/68 (as codified by Regulation 169/2009) or the European Commission takes action under Article 87 of the Treaty of Rome which prevents or will prevent the operation of any of this Agreement, the Agreement for Lease and to the extent that they have been granted the HS1 Lease, the Ebbsfleet Underlease or the Ashford Leases or the parties agree, following receipt of a written indication that the European Commission or a national competition authority intends so to proceed, that the European Commission or a national competition authority is likely to be successful in its action and the effect will be to prevent the operation of any of those Agreements.

3.7 Unavailability of Insurances

HS1 Co is unable to procure that any of the insurances set out in Schedule 5 [Insurances] is taken out and/or maintained in full force because such insurance is not available to infrastructure operators generally at a commercial price and on commercial terms in the United Kingdom insurance market, such insurance concerns material risks to the HS1 Concession, such unavailability is not caused by any action or omission of HS1 Co, its Contractors, its sub-contractors or others for whom HS1 Co is responsible and the Secretary of State refuses to insure against such risk.

Schedule 3

Minimum Operational Standards

Schedule 3

Minimum Operational Standards

1. Introduction

- 1.1 This Schedule sets out the Minimum Operational Standards with which the Secretary of State requires HS1 Co to comply or to procure compliance.
- 1.2 The Minimum Operational Standards do not specify matters of general law which apply to HS1 Co.
- 1.3 Without prejudice to Clause 1 of this Agreement, words and expressions defined in Schedule 1 shall have the same meaning in this Schedule. In this Schedule unless the context otherwise requires:

"Annual Performance Floor": means no more than 13% in aggregate of Train Services in a Year being Delayed in that Year, to the extent that the reason for such Train Service being Delayed arises: (a) wholly or mainly from an HS1 Co Attributable Incident; or (b) from an Unidentified Incident, but for the purposes of calculating this performance floor only 50% of Train Services which are Delayed as a result of Unidentified Incidents in any Year shall be taken into account;

"Capability Requirements": means the requirements set out in paragraphs 2.1, 2.3, 2.4 and 2.5 of this Schedule;

"Channel Tunnel Boundary": means the point on HS1 at which trains:

- (A) travelling from France begin to be controlled by the HS1 signalling system (such point being block section marker "AF 362"); or
- (B) travelling towards France cease to be so controlled (such point being block section marker "AF 366");

"Delayed": means in respect of a Train Service, when such Train Service arrives at a Recording Point for a station on HS1 or (as the case may be) passes the Recording Point on HS1 immediately prior to its point of egress from HS1 five minutes or more after the due arrival time for that Train Service at the Recording Point for the relevant station or point of egress (as the case may be) contained in the Published Timetable, and **"Delay"** shall be construed accordingly, and Delayed shall include any Train Service that is cancelled, and for the avoidance of doubt if a Train Service is Delayed on passing intermediate Recording Points on HS1 in circumstances where it is no longer Delayed when arriving at the Recording Point for the final station on HS1 or (as the case may be) passing the Recording Point on HS1 immediately prior to its point of egress from HS1 in respect of its timetabled service on HS1, the Delay at such intermediate Recording Point(s) shall be disregarded for the purposes of this Schedule;

"Eurotunnel": means the infrastructure manager of the Channel Tunnel, being (1) the Channel Tunnel Group Limited, a company registered in England with company number 1811435, whose registered office is at the UK Terminal, Ashford Road, Folkestone, Kent CT18 8XX; and (2) France Manche SA, a company incorporated in France, whose principal address is at 19 Boulevard Malesherbes, Paris 75008, France;

"HS1 Co Attributable Incident": means:

- (A) an incident caused wholly or mainly by any act or omission of HS1 Co (except to the extent that such act or omission is due to any breach of a track access agreement by a relevant train operator) other than:
- (i) any incident originating from or affecting rolling stock (but not due to any incident caused wholly or mainly by an act or omission of HS1 Co) operated by or on behalf of such train operator (including its operation);
 - (ii) any incident arising in connection with or at any station (other than in connection with signalling under the control of HS1 Co at that station or physical works undertaken by or on behalf of HS1 Co at that station) or any light maintenance depot;
 - (iii) any incident arising in connection with or at any network other than HS1 including any failure of Eurotunnel to provide a clear route for a train to pass the Channel Tunnel Boundary at the time it is scheduled to do so in the applicable timetable for such train or any failure of Network Rail to provide a clear route for a train to pass the NR Boundary at the time it is scheduled to do so in the applicable Published Timetable;
 - (iv) any incident caused by any interruption to or cessation of the supply of electricity to HS1 not originating from the acts or omissions of HS1 Co;
 - (v) any incident caused by any strike or other form of industrial action of any person which is not employed by HS1 Co or any of its Associates, Contractors or sub-contractors;
 - (vi) any incident caused wholly or mainly by a Change in Circumstances in accordance with paragraph 2.4 [Hostilities], paragraph 2.5 [Civil Disorder], paragraph 2.6 [Other Force Majeure] or paragraph 2.8 [Partial Sequestration] of Schedule 2 [Change in Circumstances] for such period as HS1 Co, its Contractors or its sub-contractors may reasonably require to remedy the consequences of the same in accordance with Best Practice;
 - (vii) any incident in connection with any theft, fatality or injury on HS1, caused by any collision with a train, any police action or security alert, any fire outside HS1, any escape of gas or water, any road or vehicles, exceptional weather or the consequences thereof or any animals on HS1;
- (B) notwithstanding paragraph (A) above, any incident caused wholly or mainly by a failure by HS1 Co to comply with a track access agreement or a failure by HS1 Co to take reasonable steps to mitigate the effects of any incident;
- (C) any incident caused wholly or mainly by circumstances within the control of HS1 Co (whether or not HS1 Co is at fault, except to the extent that such circumstances are due to any breach of a track access agreement by a relevant train operator) other than the exceptions listed in sub-paragraphs (i)-(vii) above;

"HS1 Network Code": means the document known as the HS1 Network Code;

"Infrastructure Capability": means the capability of HS1 to achieve certain output parameters taking account of the performance of all infrastructure systems and sub-systems such as but not limited to track, signalling and power;

"NR Boundary": means the point on HS1 at which trains:

- (A) travelling from Network Rail's network begin to be controlled by the HS1 signalling system; or

(B) travelling towards Network Rail's network cease to be so controlled;

"Period": means each consecutive period of 28 days during the term of this Agreement commencing at 0000 hours on 1 April each Year, provided that:

- (a) the length of the first such period in the first Year shall be varied to ensure that the following periods in that Year are calculated as if the first such period in that Year had commenced at 0000 hours on 1 April; and
- (b) the length of the last such period in any Year shall be varied by up to 2 days to ensure that the first such Period in the following Year commences at 0000 hours on 1 April (save in the case of the final Year when the last period shall end on the Expiry Date or the date of termination (if earlier));

"Published Timetable": means the timetable published in accordance with schedule 4 of the Railways Regulations or any emergency timetable following an incident published in accordance with the HS1 Network Code;

"Recording Point": means a point at which HS1 Co records trains using the performance monitoring system described in Condition B1 of the HS1 Network Code;

"Resumption Capability Level": has the meaning given to it in paragraph 2.6A1 of this Schedule;

"Resumption Notice": has the meaning given to it in paragraph 2.6A1.1 of this Schedule;

"Three Month Performance Floor": means no more than 15% in aggregate of the Train Services timetabled to operate in a Three Month Period being Delayed in that Three Month Period, to the extent that the reason for such Train Service being Delayed arises wholly or mainly from an HS1 Co Attributable Incident;

"Three Month Period": means in respect of the first Three Month Period, the period commencing on the Operative Date, comprising the first Period (or part thereof) and the second and third Periods and, thereafter, each consecutive period comprising three Periods; and

"Unidentified Incident": means an incident causing a Delay of which the cause is unidentified, unless HS1 Co reasonably can demonstrate that such incident was not caused directly or indirectly by the acts or omissions of HS1 Co (excluding an incident causing a delay of less than three minutes at an intermediate Recording Point).

2. Train Services

2.1 HS1 Co shall provide or procure the provision of sufficient Infrastructure Capability and line speeds on HS1 for International and Domestic Services to allow the following objectives to be achieved and to continue to be achieved:

2.1.1 Infrastructure Capability for a total of at least 20 trains per hour in each direction consisting of trains travelling between London St Pancras Station and the Channel Tunnel without stopping at three minute headways at a maximum speed of 300 kilometres per hour for International Services; and

2.1.2 Infrastructure Capability for a total of at least 16 trains per hour in each direction consisting of trains travelling between London St Pancras Station and Ashford without stopping at three minute headways at a maximum speed of 225 kilometres per hour for Domestic Services.

2.2 The parties acknowledge that while the Infrastructure Capability of HS1 must be capable of meeting the Capability Requirements in paragraphs 2.1.1 and 2.1.2 for each type of Train

Service respectively at all times throughout the HS1 Concession, it is not possible to provide capacity for such Train Services simultaneously.

- 2.3 HS1 Co shall provide or procure the provision of sufficient Infrastructure Capability and line speeds on HS1 for Freight Services during such times as Freight Services are timetabled to operate to allow trains of up to 1600 tonnes each to travel at a maximum speed of 140 kilometres per hour between the Channel Tunnel Boundary and the point on HS1 at which the freight chords leave the mainline at Ripple Lane.
- 2.4 HS1 Co shall provide or procure the provision of sufficient Infrastructure Capability on HS1 for a Eurostar 373/1 or a train with equivalent performance characteristics to travel in either direction between London St Pancras Station at a stand in the platform and the Channel Tunnel Boundary without stopping in less than 32 minutes under normal signalling conditions within a test track environment and not in a normal traffic environment.
- 2.5 HS1 Co shall provide or procure the provision of sufficient Infrastructure Capability on HS1 to meet the requirements set out in section 3 [Infrastructure] of the Network Statement for HS1 dated 27 November 2006 and attached to this Schedule as Appendix 2 and the line speeds set out in the Sectional Appendix dated December 2008 and attached to this Schedule as Appendix 3 (each as may be updated by agreement of HS1 Co and the Secretary of State from time to time). In the event that there is any conflict between any of paragraphs 2.1 to 2.4 and this paragraph 2.5, the requirements of paragraphs 2.1 to 2.4 shall prevail.
- 2.6 If HS1 Co fails to provide Infrastructure Capability in accordance with the Capability Requirements in circumstances where such failure is caused wholly or mainly by its act or omission for a period of 3 consecutive days or more and where, for reasons of safety, security, defence, emergency, illegality, or the inability of train operators to use HS1, the Secretary of State considers it necessary, the Secretary of State may (subject always to paragraphs 2.6A and 2.6B of this Schedule) at any time following the expiry of the 3 day period:
- 2.6.1 require HS1 Co to cause the Infrastructure Capability to be provided by suitably qualified third parties in accordance with Best Practice; or
- 2.6.2 where HS1 Co is unable or unwilling to cause the Infrastructure Capability to be provided as aforesaid, procure that HS1 is operated or such Infrastructure Capability is made so available in accordance with Best Practice, at the expense of HS1 Co (subject to paragraph 2.6B),

until, in either case, HS1 Co is again able to cause the operation of HS1 or provision of the relevant Infrastructure Capability at the appropriate level, in which case the Secretary of State shall procure that the operation of HS1 is expeditiously returned to the operation of HS1 Co.

- 2.6A1 Where the Secretary of State has procured that HS1 is operated or such Infrastructure Capability is made so available pursuant to paragraph 2.6 of this Schedule, and where HS1 Co is not again able to cause the operation of HS1 or provision of the relevant Infrastructure Capability wholly in accordance with the Capability Requirements but HS1 Co reasonably considers it is able to cause the operation of HS1 or provision of the relevant Infrastructure Capability to enable the running of 50% or more of the Train Services timetabled to run immediately prior to the Secretary of State exercising his rights under paragraph 2.6 of this Schedule (or, where such service level is not reasonably achievable because of the nature of the event or circumstances which led the Secretary of State to exercise his rights under paragraph 2.6 of this Schedule, such lower service level as may be agreed by the Secretary of State and HS1 Co (both acting reasonably) having regard to all the relevant circumstances) (the "**Resumption Capability Level**"), then:
- 2.6A1.1 HS1 Co shall, no less than 3 days prior to the date on which it considers it will be able to provide or cause to be provided the Resumption Capability Level, notify the

Secretary of State of this in writing (the "**Resumption Notice**"). The Resumption Notice shall be accompanied by evidence to demonstrate how HS1 Co considers it will be able to provide or cause to be provided the Resumption Capability Level at the date indicated in the Resumption Notice.

- 2.6A1.2 The Secretary of State shall, within 3 days of receipt of a Resumption Notice, notify HS1 Co whether or not he (acting reasonably) is satisfied that HS1 Co will be able to cause or provide the Resumption Capability Level.
- 2.6A1.3 If the Secretary of State notifies HS1 Co that he is so satisfied, or he fails to respond to HS1 Co within the 3 day-period (in which case he shall be deemed to be so satisfied), the Secretary of State shall procure that the operation of HS1 is returned to the operation of HS1 Co expeditiously and no later than the date specified in the Resumption Notice. If the Secretary of State (acting reasonably) is not satisfied that, on the basis of the evidence provided by HS1 Co, HS1 Co will be able to provide or cause to be provided the Resumption Capability Level on the date specified in the Resumption Notice, the Secretary of State shall (in his notification under paragraph 2.6A1.2) inform HS1 Co of his reasons for this and the exercise by the Secretary of State of his rights under paragraph 2.6 of this Schedule shall continue (save that HS1 Co may serve such further Resumption Notices as it considers appropriate).
- 2.6A2 In circumstances where train operators are not able to use HS1 and where HS1 Co is taking all reasonable steps to cause the Infrastructure Capability to be provided pursuant to paragraph 2.6.1 of this Schedule, then HS1 Co shall not be deemed to be unable or unwilling to cause the Infrastructure Capability to be provided.
- 2.6B The Secretary of State shall reimburse HS1 Co in respect of any additional costs, expenses, losses, claims and liabilities which it reasonably and properly incurs or has to bear (including in relation to providing or procuring the Infrastructure Capability in accordance with the Capability Requirements, and/or any additional payment which HS1 Co is required to make to any party including, without limitation, a train operator under a track access agreement), subject to HS1 Co taking such steps as are reasonable in the circumstances to prevent or mitigate any such costs, expenses, claims or liabilities (or the quantum thereof), and in each case which would not have arisen or have been incurred but for the exercise (and the manner of exercise) by the Secretary of State of his rights under paragraph 2.6 of this Schedule.
- 2.7 If HS1 Co fails to provide or procure the provision of Infrastructure Capability in accordance with the Capability Requirements in circumstances where such failure is caused wholly or mainly by its act or omission for a period of or periods aggregating two months or more in any two year period (such period to be calculated on a rolling basis excluding any period during which the Secretary of State is exercising or has exercised his rights contained in paragraph 2.6 of this Schedule) then (without prejudice to paragraph 8 of this Schedule) the ORR shall implement the Enforcement Procedure.
- 2.8 It is acknowledged by the Secretary of State and HS1 Co that the Capability Requirements may not be achieved in circumstances where Renewals and Replacements or Specified Upgrades are being carried out provided that this shall apply only where such Renewals and Replacements or Specified Upgrades are being carried out in accordance with HS1 Co's General Duty.

3. Performance Standard

- 3.1 HS1 Co shall provide or procure the provision of sufficient Infrastructure Capability on HS1 in accordance with the Capability Requirements such that performance at a level above the Three Month Performance Floor and the Annual Performance Floor can be achieved.
- 3.2 Where (excluding any period where the Secretary of State is exercising his rights contained in paragraph 2.6 of this Schedule):

- 3.2.1 HS1 Co has not provided or procured the provision of Infrastructure Capability on HS1 with the result that performance at a level above the Three Month Performance Floor has not been achieved; or
- 3.2.2 at the end of any Year HS1 Co has failed to provide or procure the provision of Infrastructure Capability on HS1 with the result that performance at a level above the Annual Performance Floor has not been achieved,

then (without prejudice to paragraph 8 of this Schedule) the ORR shall implement the Enforcement Procedure.

- 3.3 Without prejudice to the ORR's right to implement the Enforcement Procedure in accordance with paragraph 3.2 above and HS1 Co's obligation to comply with the provisions of the Enforcement Procedure, the failure by HS1 Co to comply with a Final Order or a court order in accordance with Clause 12.1.6 where such Final Order or court order relates to a failure by HS1 Co in accordance with paragraph 3.2.1 of this Schedule in respect of a Three Month Period prior to 1 January 2011, shall not constitute an Event of Default for the purposes of Clause 12.1.6.
- 3.4 It is acknowledged by the Secretary of State and HS1 Co that HS1 Co's obligations under paragraph 3.1 of this Schedule are without prejudice to HS1 Co's obligation to comply with HS1 Co's General Duty in accordance with the provisions of Schedule 10 [Asset Stewardship and Periodic Review].

4. No Liability

The Secretary of State shall have no liability to HS1 Co for any damage or Losses which have occurred prior to the period during which the Secretary of State procures that HS1 is operated or Infrastructure Capability is made available pursuant to paragraph 2.6.2 of this Schedule or which results from breach by HS1 Co of any of its obligations under this Agreement but shall be liable for any failure by the Secretary of State or the operator procured by the Secretary of State pursuant to paragraph 2.6.2 to comply with Best Practice or any other provision of this Agreement during that period.

5. Stations

- 5.1 HS1 Co shall provide or procure the provision of the station facilities set out in Appendix 1 to this Schedule in respect of the HS1 Stations and Ashford International Station unless otherwise agreed between the parties (acting reasonably).

6. Monitoring and Reporting

- 6.1 The parties acknowledge that HS1 Co is required to monitor the performance of Train Services in accordance with the terms of relevant track access agreements, using the Recording Points, and that the data recorded for such purposes will also be used for the purposes of determining whether or not HS1 Co has achieved the Three Month Performance Floor and Annual Performance Floor.
- 6.2 Accordingly, HS1 Co shall provide the ORR within 15 Business Days of the end of each Three Month Period and the end of each Year over the term of this Agreement with a written report setting out in respect of such Three Month Period or Year (as the case may be):
 - 6.2.1 the total number of Train Services Delayed over such period;
 - 6.2.2 the number of such Train Services Delayed where the incident giving rise to such Train Service being Delayed was caused wholly or mainly by an HS1 Co Attributable Incident (including where Train Services were Delayed by reason of several incidents but where Delay was caused wholly or mainly by the relevant HS1 Co Attributable Incident);

- 6.2.3 the number of such Train Services Delayed where the incident giving rise to such Delay is an Unidentified Incident in which case HS1 Co shall also provide evidence to demonstrate that fact;
 - 6.2.4 the proportion of Train Services Delayed over such period as a percentage of the total number of Train Services timetabled to operate over such period;
 - 6.2.5 the proportion of Train Services Delayed over such period, where the incident giving rise to such Train Service being Delayed was caused wholly or mainly by an HS1 Co Attributable Incident, as a percentage of the total number of Train Services timetabled to operate over such period;
 - 6.2.6 the proportion of Train Services Delayed over such period, where the cause of the incident giving rise to such Train Service being Delayed was an Unidentified Incident in which case HS1 Co shall also provide evidence to demonstrate that fact, as a percentage of the total number of Train Services timetabled to operate over such period;
 - 6.2.7 the total proportion of Train Services Delayed over such period as a result of incidents for which responsibility is allocated to HS1 Co, as a percentage of the total number of Train Services timetabled to operate over such period; and
 - 6.2.8 such further information as the ORR may reasonably request.
- 6.2A Information that is contained in a report produced pursuant to paragraph 6.2 above and that relates to the Period ending immediately before the report is produced may be provided by HS1 Co to the ORR in draft form.
- 6.3 Should a Recording Point fail, HS1 Co shall use the relevant performance information as it uses in substitution for such Recording Point under the terms of the relevant track access agreements for the purposes of its reports until such time as the Recording Point is restored.
- 6.4 The ORR shall have the right to audit the information supplied pursuant to paragraph 6.2 of this Schedule including any monitoring procedures used by HS1 Co in connection therewith.
- 6.5 HS1 Co shall, on reasonable notice, provide all reasonable co-operation in relation to any such audit by the ORR including to the extent reasonably possible in each particular circumstance:
- 6.5.1 granting or procuring the grant of access during normal business hours to any premises used in HS1 Co's performance of this Agreement, whether HS1 Co's own premises or otherwise;
 - 6.5.2 granting or procuring the grant of access during normal business hours to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of HS1 Co's obligations under this Agreement, wherever situated and whether HS1 Co's own equipment or otherwise;
 - 6.5.3 ensuring that appropriate security systems are in place in accordance with Best Practice to protect data during the audit;
 - 6.5.4 making any contracts and other documents and records required to be maintained under this Agreement (whether exclusively or non-exclusively) available for inspection during normal business hours;
 - 6.5.5 providing a reasonable number of copies of any contracts and other documents or records reasonably required by the ORR and/or granting copying facilities to the ORR during normal business hours for the purposes of making such copies;

- 6.5.6 complying with the ORR's reasonable requests for access during normal business hours to senior personnel engaged in HS1 Co's performance of this Agreement;
- 6.5.7 providing the ORR with such office space and telephones at any premises used in the performance of this Agreement as reasonably required during normal business hours to enable the ORR to perform each audit properly;
- 6.5.8 during normal business hours, providing a reasonable number of representatives or employees of the ORR with such office space, telephones, reasonable facilities and interviews with personnel engaged in HS1 Co's performance of or compliance with this Agreement at any premises used by HS1 Co in the performance of this Agreement as are reasonably required to enable such representatives or employees of the ORR to perform each audit properly in accordance with this paragraph (subject to their entering into a confidentiality undertaking with HS1 Co in terms reasonably acceptable to it) and permitting such representatives or employees of the ORR to bring personal computers on to sites; and
- 6.5.9 appointing and maintaining a contact that is readily available during normal business hours to assist the ORR and representatives or employees of the ORR in carrying out any audit pursuant to this paragraph 6.5.

7. Undertakings and Assurances

- 7.1 If there is any inconsistency between the Minimum Operational Standards and the undertakings and assurances with which HS1 Co is required to comply pursuant to Clause 3.1.3, the undertakings and assurances shall prevail to the extent of any such inconsistency and, provided that HS1 Co complies with such undertakings and assurances, HS1 Co shall be deemed to have complied with the Minimum Operational Standards to the extent of such inconsistency.
- 7.2 HS1 Co shall:
 - 7.2.1 take all reasonable action to minimise the extent of its non-compliance with the Minimum Operational Standards pursuant to paragraph 7.1 (above);
 - 7.2.2 inform the ORR of the circumstances leading to an inconsistency as described in paragraph 7.1 (above); and
 - 7.2.3 provide evidence demonstrating why those circumstances arose, the extent of such inconsistency and what action it has taken to minimise its non-compliance with the Minimum Operational Standards.

8. Enforcement Procedure

If the ORR considers that HS1 Co is contravening or is likely to contravene any of the provisions of this Schedule, it may implement the Enforcement Procedure.

Appendix 1

Station Facilities

1. London St Pancras Station

1.1 London St Pancras Station has the following facilities:

1.1.1 thirteen platforms, including:

- (a) four platforms (nos. 1 to 4 inclusive) for domestic services;
- (b) six platforms (nos. 5 to 10 inclusive) for international services; and
- (c) three platforms (nos. 11 to 13 inclusive) for high speed domestic services to and from Ebbsfleet and North Kent, and Ashford and East Kent, via the NRIL Network;

1.1.2 platform lengths are:

- (a) Platform 1: nominal length 258m;
- (b) Platforms 2-4: nominal length 264m;
- (c) Platforms 5-10: nominal length 410m; and
- (d) Platforms 11-13: nominal length 294m;

1.1.3 international arrivals and departures areas;

1.1.4 two sets of public toilets;

1.1.5 large public concourse areas on the ground floor and at platform level;

1.1.6 approximately 60 retail units;

1.1.7 arrival and departure passenger information screens;

1.1.8 direct access to the NRIL low-level station for services to Brighton and Bedford;

1.1.9 a public car parking facility; and

1.1.10 direct access to London Underground.

Due to weight limitations, freight traffic is not permitted unless under special instructions and arrangements.

2. Stratford International Station

2.1 Stratford International Station has the following facilities:

2.1.1 Four platforms (located below ground level and reached by escalators and lifts), including:

- (a) two for international services; and
- (b) two for high speed domestic services;

- 2.1.2 platform lengths are:
 - (a) international platforms: nominal length 410m; and
 - (b) domestic platforms: nominal length 290m;
- 2.1.3 public toilets;
- 2.1.4 a public car parking facility;
- 2.1.5 large public concourse areas;
- 2.1.6 retail units;
- 2.1.7 international arrivals and departures areas; and
- 2.1.8 arrival and departure passenger information screens.

3. Ebbsfleet International Station

3.1 Ebbsfleet International Station has the following facilities:

- 3.1.1 six platforms, including:
 - (a) two for international trains;
 - (b) two for high speed domestic trains (adjacent to the international platforms); and
 - (c) two for North Kent domestic services, sited on the North Kent connecting line;
- 3.1.2 platform lengths are:
 - (a) international platforms: nominal length 410m; and
 - (b) domestic platforms: nominal length 290m;
- 3.1.3 public toilets;
- 3.1.4 a large public concourse area at ground floor level;
- 3.1.5 a public car parking facility for up to 5,000 vehicles;
- 3.1.6 international arrivals and departures areas;
- 3.1.7 arrivals and departure passenger information screens; and
- 3.1.8 retail units.

4. Ashford International Station

4.1 Ashford International Station has the following facilities:

- 4.1.1 two platforms (nos. 3 and 4) for international services;
- 4.1.2 nominal platform lengths are 412m;

- 4.1.3 international arrivals and departures areas;
- 4.1.4 large public concourse areas on the ground floor;
- 4.1.5 approximately five retail units;
- 4.1.6 arrival and departure passenger information screens; and
- 4.1.7 a public car parking facility.

Appendix 2

Network Statement for HS1 dated 27 November 2006

**CTRL (UK) Ltd,
Union Railways (North) Ltd**

**Network Statement
High Speed 1 (HS1)
(Formerly the Channel Tunnel Rail Link)**



Validity Date: 27 November 2006

CCMS ref: 3121605

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1.0 GENERAL INFORMATION

1.1 Introduction

This Network Statement has been produced by Network Rail (CTRL) Ltd (NR(CTRL)) on behalf of CTRL(UK) Limited and Union Railways (North) Limited, the Infrastructure owners of CTRL Sections 1 and 2 respectively, to describe the services available to customers who wish to operate trains on the HS1 high-speed line. This new high-speed line links the UK to continental Europe via the Channel Tunnel through to London, and North and East Kent to London.

Please note that as the CTRL Project approaches the end of its construction phase and prepares to enter full operation, the Channel Tunnel Rail Link will be re-branded as High Speed 1. Future documentation may use 'High Speed 1' or the abbreviation HS1, whilst earlier documents refer to the CTRL, and these will be updated in due course.

The line is being built in 2 sections. Section 1 (Fawkham Junction/Southfleet Junction to Cheriton) was opened on 28 September 2003. Section 2 (London St Pancras to Southfleet Junction) is currently under construction and is planned to open in 2007.

NR(CTRL), a subsidiary of Network Rail Infrastructure Ltd (NRIL), manages, operates and maintains and, as well as being a service provider, performs the functions of Allocation and Charging Bodies for Section 1 of the HS1, and will perform the same functions in respect of Section 2 when it is opened. Some of the functions of Allocation Body and other services have been sub-contracted by NR(CTRL) to NRIL.

This version of Network Statement relates to Sections 1 and 2 of the HS1, but access to Section 2 will only be possible from a date to be advised.

The Network Statement is subject to alteration from time to time.

1.2 Objective

The Network Statement is designed to supply Transport Operators (TO) and/or other applicants with the essential information needed to gain access to, and to use the HS1 as required by The Railways Infrastructure (Access and Management) Regulations 2005 (S1/2005/3049) ("The Rail Regulations 2005"). Please see section 1.3 for details of other legislation.

1.3 Legal Framework

The following are regulations and legislation which relate to the HS1:

- ✓ CTRL Act 1996
- ✓ Railways Act 1993 (as amended)
- ✓ The Railways (Interoperability) Regulations 2006, together with the associated guidance issued by the DfT
- ✓ The Railway (Licensing of Railway Undertakings) Regulations 2005 (S1/2005/3050) which transposed Directive 95/18/EC as amended by 2001/13/EC & 2004/29/EC
- ✓ The Rail Regulations 2005 which transposed Directive 91/440/EC as amended by Directives 2001/12/EC and 2004/51/EC and Directive 2001/14/EC as amended by Directive 2004/49/EC
- ✓ Railways and Other Guided Transport (Safety) Regulations 2006, ("the ROGS Regulations") together with the associated guidance issued by the ORR

1.4 Legal Status

1.4.1 General Remarks

This Network Statement has been produced in accordance with UK legislation and is intended to be an informative document. It is not intended to be an invitation to treat or to be an offer to enter into a contract.

1.4.2 Liability

Reasonable efforts have been made to ensure that the information provided in this Network Statement is accurate. No liability can be accepted for errors, omissions or inaccuracies. Suspected errors which are notified to NR(CTRL) will be reviewed and corrected where appropriate in the next issue of the Network Statement.

Some of the data in this Network Statement and documents to which it refers concern Section 2 of the HS1, which is still under construction. Such information is thus subject to change once Section 2 is operational.

As Section 2 of the HS1 is still under construction, the costs of its construction, maintenance and operation have yet to emerge and it is therefore not possible accurately to predict track access charges. They will be calculated in accordance with the principles set out in Section 6 and the independent Allocation and Charging Body will be pleased to enter into discussions with serious applicants.

1.4.3 Appeals Procedure

The Office of Rail Regulation (ORR) is the regulatory body to which an appeal may be made to the extent that it has jurisdiction on the HS1. Details of the procedure can be obtained from the ORR whose contact details are on their website, www.rail-reg.gov.uk. In considering appeals concerning the HS1, the ORR is obliged by the Rail Regulations 2005 to consult with and take account of any representations made by the Secretary of State for Transport.

Any decisions which are disputed but which are not able to be appealed to the ORR will be dealt with using the CTRL Disputes Resolution Agreement subject to there being no extension, by the agreement of the parties or otherwise, of the time available to the tribunal to make a decision where Regulation 20(5) of the Rail Regulations 2005 applies.

Signatories to the CTRL Disputes Resolution Agreement are expected to exhaust the applicable procedures set out therein prior to appealing to the ORR.

1.5 Structure of Network Statement

This Network Statement has been structured in the format agreed by the Network Statement Working Group, using version 2005033 of the Implementation Guide, formed through the Developing European Railways Committee, a requirement of EC Directive 2001/14/EC.

1.6 Validity and Updating Process

The Network Statement shall be updated as and when changes are required, subject to the requirements of the Rail Regulations 2005.

1.6.1 Validity Period

This Network Statement is valid from 28 November 2005 until further notice. Annual timetable start and finish dates are in accordance with Schedule 4 of the Rail Regulations 2005.

1.6.2 Updating Process

The Network Statement shall be updated and re-published as and when changes are required. In the event that the Rail Regulations 2005 require a revision to the Network Statement to be

published in advance of a certain date or event, such provisions will be complied with. If a revision involves the consideration of competition policy, or compliance with an article of law which requires consultation to take place, then such consultation will be undertaken accordingly.

Consultation will be carried out by the circulation of documents to all known interested parties and the fact that a consultation is under way will be published on the website listed for NR(CTRL). The IM will stipulate a reasonable time for response and the invitation to comment will stipulate whether meetings are appropriate to discuss the subject matter.

1.7 Publishing

The Network Statement can be found on the website listed for NR(CTRL) (see section 1.8) and in paper form by request. A charge will be levied for the supply of copies of the Network Statement requested in paper form.

1.8 Contacts

1.8.1 On all issues related to Track Access on the HS1:

Business Manager
Network Rail (CTRL) Ltd
2, Ossulston Street,
London NW1 1HT
Tel: 00 44 (0)20 7983 6800
Email: nrctrl@networkrail.co.uk
Website: www.lcrhq.co.uk

1.8.2 On all issues relating to Station Access on the HS1:

Business Manager
Network Rail (CTRL) Ltd
2, Ossulston Street,
London NW1 1HT
Tel: 00 44 (0)20 7983 6800
Email: nrctrl@networkrail.co.uk
Website: www.lcrhq.co.uk

1.8.3 On issues relating to Capacity Allocation on the HS1:

Business Manager
Network Rail (CTRL) Ltd
2, Ossulston Street,
London NW1 1HT
Tel: 00 44 (0)20 7983 6800
Email: nrctrl@networkrail.co.uk
Website: www.lcrhq.co.uk

1.8.4 On issues relating to Temple Mills Depot:

Depot Manager
Eurostar (UK) Ltd
Eurostar House
Waterloo Station
London SE1 8SE
Tel: 00 44 (0) 20 7921 5700
Website: www.eurostar.com

1.8.5 On issues relating to Ashford Depot:

Head of Maintenance Delivery
Hitachi Europe Ltd
Old Change House
128 Queen Victoria Street
London EC4V 4BJ
Tel: 00 44 (0)20 7970 2711
Website: www.hitachi-rail.com

1.8.6 On issues relating to Dollands Moor:

Depot Manager
EWSI
310 Goswell Road
London EC1V 7LW
Tel: 00 44 (0) 870 140 7000
Website: www.ews-railway.co.uk

1.9 Cooperation between Infrastructure Managers

Several European Infrastructure Managers participate in an organisation called Railnet Europe to cooperate in relation to international infrastructure capacity. These Infrastructure Managers have set up a 'One Stop Shop' which acts as a single point of contact for coordination of requests for international infrastructure capacity. TOs wishing to make use of this facility should contact NRIL (who act on behalf of NR(CTRL)) at the following address:

Network Rail 'One Stop Shop'
Operational Planning
40 Melton Street
London NW1 2EE
Tel: 00 44 (0)207-557-8120
Website: www.networkrail.co.uk

1.10 Glossary

Please refer to Appendix 1 for Glossary of Terms

2 ACCESS CONDITIONS

2.1 Introduction

This section will deal with Access Conditions as applicable to the HS1.

2.2 General Access Requirements

The main legal requirements for gaining access to the HS1 are set out in the documents cited in section 1.3 and in section 2.2.1. There are minor differences between the requirements applicable to the HS1 compared to those for the NRIL Network. Please see sections 1.8/1.9 for the relevant contact details.

2.2.1 Requirements to apply for a train path

To apply for a train path on the HS1, a TO must satisfy the following requirements:

- ✓ Hold a valid TO's licence, or licence exemption (granted by ORR), or fulfil the relevant provisions of the CTRL Act 1996 which grant exemption from the need for a licence – see 2.2.3
- ✓ Hold a valid TO's Railway Safety Certificate, with a Part B, valid for the HS1, and the types of vehicles that are to be operated on the infrastructure issued by the ORR – see 2.2.4

- ✓ Ensure all vehicle types to be operated have been subject to the process described in 2.8 below.
- ✓ Have appropriate insurance as described in section 2.2.5
- ✓ Have been allocated Train Slots in the timetable, unless allocated otherwise by special arrangements - see section 4.
- ✓ Be a signatory to the CTRL Claims and Handling Agreement (CTRL CAHA) – see 1.8 for NR(CTRL) contact details.
- ✓ Be a signatory to the CTRL Disputes Resolution Agreement - see 1.4.3
- ✓ Have paid the charge for the HS1 minimum access package – see section 5.2 for minimum package description and section 6 for charges.
- ✓ Satisfy the requirements in Access Condition D of the CTRL Access Conditions – see section 4.
- ✓ Have entered into one or more Access or Framework Access Agreements covering the scope of desired access – see section 2.4.1.

2.2.2 Who is allowed to perform train operations (freight and/or passenger)?

The HS1 is open to passenger and freight TOs, whether or not domiciled in the United Kingdom, as long as they fulfil the requirements to apply for a train path and have entered into appropriate contracts as described in section 2.4.2. The HS1 has been declared as Specialised Infrastructure as set out in the Rail Regulations 2005.

However, applicants who require to gain access to and egress from the HS1 by means of other Networks are advised also to check the requirements of the relevant Infrastructure Managers.

2.2.3 Licences

Licences are issued by the ORR for both domestic and international users. The ORR and corresponding bodies in other member states of the European Union will also issue new European Licences and Statement of National Regulatory Provisions (SNRP). Please refer to the ORR - contact details can be found on their website www.rail-reg.gov.uk. The CTRL Act 1996 authorises an exemption from the requirement to hold a train operating licence for certain operations on the HS1.

2.2.4 Safety Certificate

In accordance with Regulation 3 of the ROGS Regulations, a Transport Operator (TO) is required to produce and have accepted by the ORR (formerly known as HMRI) a valid safety certificate. Regulation 5 of the ROGS Regulations requires that the Safety Management System used by a TO takes into account the risks arising as a result of others such as the Infrastructure Manager and other TO's. In accordance with Regulation 17(3) of the ROGS Regulations, a TO must submit its draft safety certificate document to NR(CTRL) and other TO's using the HS1 at the same time as it is submitted to the ORR. Please refer to section 1.8 for NR(CTRL) contact details.

2.2.5 Insurance

Each TO must have the necessary insurance before operating on the HS1. This includes Public Liability Insurance of at least £155 million, including cover for the infrastructure owners, and Employers' Liability Insurance of at least £10 million. The ORR has published an updated version of the Guidance on Insurance against Third Party Liability, which can be viewed from the related links on the ORR website, www.rail-reg.gov.uk. It sets out ORR's approach to carrying out its new role of applying TO's third party liability insurance arrangements. The ORR has no jurisdiction over the HS1 on this matter but the infrastructure owners have adopted the ORR's requirements.

2.3 How to apply for a train path

Any party wishing to operate trains on the HS1 Network must satisfy the relevant legal requirements and pre-conditions including those set out in section 2.2.1. The main

requirements include Access Condition D of CTRL Track Access Conditions. Please refer to section 4 for further details of CTRL Track Access Conditions.

2.4 General Business / Commercial Conditions

2.4.1 Framework Agreement

A Framework Agreement specifies the characteristics of the infrastructure capacity allocated to a TO or other party over a period of time exceeding the duration of a single timetable period. It does not specify train paths in detail but provides an assurance that, in principle, suitable capacity should be available to meet the commercial needs of the TO as envisaged at the time of making the agreement. For the HS1, the function of Framework Agreements is fulfilled by Track and Station Access Agreements made between TOs and the relevant Infrastructure Owner. CTRL(UK) Ltd and Union Railways (North) Ltd, as owners of Sections 1 and 2 of the HS1, may enter into bi-lateral agreements with TOs or others to develop infrastructure enhancements.

2.4.2 Access Contracts

Except for the purposes of Emergency Access, each TO must enter into a Track Access Agreement, CTRL CAHA, a performance agreement and the CTRL Disputes Resolution Agreement with CTRL (UK) Ltd and/or Union Railways (North) Ltd, to cover the full scope of the intended operations. All TOs wishing to use a station on the HS1 must enter into a Station Access Agreement. These agreements are negotiated with NR(CTRL) on behalf of CTRL (UK) Ltd and/or Union Railways (North) Ltd.

All TOs except those providing only Network Services will be required to enter into a Performance Agreement consistent with the arrangements in force at the time. Different arrangements will apply when commercial passenger services start on Section 2.

Regulation 28(4) of the Rail Regulations 2005 state that access agreements covering the CTRL do not have to be approved by the ORR, but the Secretary of State for Transport has a duty to supervise negotiations on charging arrangements and to intervene if it considers it is necessary to do so.

TOs are required to enter into separate agreements with any Depot Facility Owners whose services they may wish to use.

2.5 Operational Rules

The CTRL Operational Rules are defined in the CTRL Rule Book, CTRL Sectional Appendix and associated publications. These are available on the website listed in NR(CTRL) contact details. Please refer to section 1.8.

2.6 Exceptional Transports

Exceptional Transport is defined in the UIC-leaflet 502. Section 9.5 of the CTRL Infrastructure Register gives details of constraints in this respect. Please see section 1.8 for NR(CTRL) contact details.

2.7 Dangerous Goods

TOs are responsible for implementing the RID Regulations on the HS1 and shall comply with Section 9.5 of the CTRL Infrastructure Register, which gives details of constraints on the transportation of Dangerous Goods on the HS1. Dangerous Goods will require special authorisation and working instructions will be issued specific to the movement of such goods as per the CTRL Rule Book module TW3 section 7. Refer to section 4.7 below for the capacity allocation process and section 5 for details of other services provided on the HS1. If necessary, please see section 1.8 for NR(CTRL) contact details.

2.8 Rolling Stock Acceptance Process

All vehicles placed in service on the HS1 by a TO must be covered by Part B of the Safety Certificate that is referred to in Schedule 2 Part 1 of the ROGS Regulations. 2(c) of this Schedule 2 requires information to be provided on the different types of rolling stock used for the operation, including evidence that they meet any relevant TSI's and national safety rules. For further information, please consult the ROGS Regulations and associated Guidance, all of which can be found on the Office of Public Sector Information (OPSI) website: www.opsi.gov.uk.

Regulation 5(1)(d)(iii) of the ROGS Regulations requires that the Safety Management System of the TO describes the arrangements for "placing in service of new or altered vehicles the design or construction of which incorporates significant changes compared to any vehicle already in use on the transport system and which changes would be capable of significantly increasing an existing risk or creating a significant safety risk". The Regulations then go on to describe how this requirement may be satisfied.

NR(CTRL) would expect a TO requiring to introduce a new vehicle, or make changes to an existing vehicle which come under the scope of Regulation 5(1)(d)(iii), to consult and agree with them (in accordance with the duty of co-operation detailed in Regulation 22) how the risks will be controlled to be tolerable and ALARP. NR(CTRL) will provide information concerning the HS1 infrastructure upon request and will require details of the proposed vehicle or changes to it in order to understand the nature of the risks and the intended controls.

For further information, please refer to section 1.8 for NR(CTRL) contact details.

2.9 Staff Acceptance Process

As indicated in 2.2.4, a TO is required to have a valid Safety Certificate before he may commence operations on the HS1. Part B of the Certificate, which is required to have been accepted by the ORR, must include the information specified in Schedule 2 Part 1, clauses 2a and 2b of the ROGS Regulations. These specify the information to be provided in order to satisfy the requirements of Article 32(3) of 2001/14/EC. Should NR(CTRL) have any concerns about this information, then they will draw them to the attention of the ORR and the TO concerned.

3 INFRASTRUCTURE

3.1 Introduction

The information provided is subject to alteration from time to time and, in particular that given in respect of Section 2 which is still under construction, is subject to confirmation.

3.2 Extent of Network

The HS1 commences at Eurotunnel Network at Cheriton (UK end of the Channel Tunnel) and, when opened fully in 2007, will extend for 109km (68 miles) to connect with the London St Pancras International Station with connections to the NRIL Network at Springhead Junction, near Dartford, Ripple Lane, near Dagenham and in the St. Pancras approaches.

Section 1 of the HS1 runs from the Eurotunnel interface at the UK end of the Channel Tunnel and Dollands Moor Freight Yard at Cheriton to Southfleet Junction where it connects to the Waterloo Connection at Southfleet Junction and then onto NRIL domestic lines at Fawkham Junction. Trains can call at or by-pass Ashford International Station on the NRIL Network. Please refer to section 1.8 for NR(CTRL) details. There is a map of the network located on the listed website.

3.2.1 Limits

Geographic limits for the HS1 Sections 1 and 2 can be found in map form on the website or in the respective CTRL Infrastructure Registers, but the document referring to Section 2 is in draft form and is subject to change. Please see section 1.8 for NR(CTRL) contact details.

Singlewell Infrastructure Maintenance Depot and the Infrastructure Maintenance Siding at St. Pancras are not available for normal railway operations and are restricted to Network Services only.

Ripple Lane Exchange Sidings are to be controlled by NRIL.

Temple Mills Depot is to be controlled by Eurostar UK Ltd and will not be part of the HS1 Network managed by CTRL(UK) Ltd, Union Railways (North) Ltd or NR(CTRL) Ltd.

St. Pancras International Station is part of the HS1 Network except that the tracks, signals, railway telecommunications and OHLE in platforms 1 to 4 inclusive are part of the NRIL Network. In addition immediately adjacent to the International Station and partly underneath it, is a NRIL operated station serving the line between Farringdon and Kentish Town, which is also part of the NRIL Network.

3.2.2 Connected Railway Networks

The HS1 connects to other railway networks at the following locations:

<u>Location</u>	<u>Infrastructure Manager</u>
St. Pancras (North London Line)	NRIL
St Pancras (North London Incline)	NRIL
St. Pancras (Midland Main Line)	NRIL (via Infrastructure Maintenance Siding with no access for revenue traffic)
Ripple Lane	NRIL
Ebbsfleet	NRIL
Fawkham Jnc (Waterloo Connection)	NRIL
Ashford connecting lines	NRIL
Dollands Moor Freight Connection	EWS International
Cheriton	Eurotunnel

3.2.3 Further information

Further detail about the HS1 infrastructure can be found in the CTRL Sectional Appendices and Infrastructure Registers. Please refer to section 1.8 for NR(CTRL) contact details.

3.3 Network Description

3.3.1 Geographical Identification

3.3.1.1 Track Typologies

The HS1 is a double-track railway, including its connections with NRIL (see 3.2.2), except for the Temple Mills and Dollands Moor connecting lines which are single track, and for the station areas at St Pancras, Stratford and Ebbsfleet which have multiple tracks. All lines are signalled for bi-directional operation, except the Waterloo Connection (between Singlewell and Fawkham Junction). Additionally, loops are provided for train regulation purposes on both Up and Down lines at Singlewell and Lenham and within the multiple-track layouts at Stratford and Ebbsfleet.

3.3.1.2 Track Gauge

The nominal track gauge is 1435mm.

Platform Gauge

Trains required to call at Ashford Station will have to comply with NRIL requirements, although the international platforms (3 & 4) have been altered to accommodate UIC GB+ vehicles only. Details of the NRIL Network Statement can be found using the NRIL website www.networkrail.co.uk.

Domestic platforms at St. Pancras, Stratford and Ebbsfleet International Stations are at UK-standard platform height of 915mm, whereas international platforms are at the TSI (high speed) Infrastructure compliant platform height of 760mm.

Special/National profile:

Fawkham Junction - Southfleet Junction (Waterloo Connection) are at UK Standard Structure Gauge (W6/W6A) for lines up to 165km/h with 380mm passing clearance.

3.3.1.3 Stations and Nodes

The following stations on the HS1 are owned by Union Railways (North) Ltd. NR(CTRL) will be the Station Facility Manager in each case, subject to contract. Please refer to 3.3.2.5 for maximum train lengths. Certain elements of stations may not be fitted out and TOs may need to arrange this.

St Pancras International Station

St Pancras International Station is located in North West fringe of Central London and has thirteen platforms. Four platforms (nos. 1 to 4 inclusive) are for use by domestic services to major towns and cities towards Sheffield (the tracks, signals, railway telecommunications and Overhead Line Equipment in which are part of the NRIL Network). Six platforms (nos. 5 to 10 inclusive) are for use by international services to and from Eurotunnel's Network and three platforms (nos. 11 to 13 inclusive) are for use by high speed domestic services to and from Ebbsfleet, North Kent via the NRIL Network, Ashford and East Kent via the NRIL Network.

Platform Lengths

Platform 1	nominal length	258m
Platforms 2- 4	nominal length	264m
Platforms 5 – 10	nominal length	410m
Platforms 11 – 13	nominal length	294m

There is an area within the station for international arrivals and departures, two sets of public toilets, large public concourse areas on the ground floor and at platform level, approximately 60 retail units, arrival and departure passenger information screens, direct access to the NRIL low - level station services to Brighton and Bedford, public car parking facility and direct access to London Underground. There are concourses and platforms for Midland Main Line services, which operate on the NRIL Network, but the station facilities for these are part of the HS1 Network and service also the HS1 domestic services. Midland Main Line Ltd (MML) is presently the lead retailer for ticketing for domestic services and Eurostar (UK) Ltd (EUKL) will be the lead retailer for ticketing international services.

Stratford International Station

Stratford International Station is located in East London and has four platforms, two for international services and two for high speed domestic services. Platforms are located below ground level reached by escalators and lifts.

Platform lengths

International platforms	nominal length	410m
Domestic platforms	nominal length	290m

There are public toilets, a public car parking facility, large public concourse areas, various retail units, international arrivals and departures areas, and arrival and departure passenger

information screens. The lead retailer for international ticketing is EUKL. Lead retailers for domestic ticketing have yet to be appointed.

Ebbsfleet International Station

Ebbsfleet International Station is located near Dartford in South East England, and has six platforms, two for international trains, two for high speed domestic trains adjacent to the international platforms and two for the North Kent domestic services, sited on the North Kent Connecting Line.

Platform lengths

International platforms	nominal length	410m
Domestic platforms	nominal length	290m

There are public toilets, a large public concourse area at ground floor level, public car parking facility for up to 5,000 vehicles, international arrivals and departure areas, arrivals and departure passenger information screens. The lead retailer for international ticketing is EUKL. Lead retailers for domestic ticketing have yet to be appointed.

3.3.2 Capabilities

3.3.2.1 Loading Gauge

The structure gauge provided for the HS1 lines is as follows:

- ✓ UIC "GC" on HS1
- ✓ UIC "GB+" on Ashford connecting lines

The track interval is not less than 4.5m between the centre lines of adjacent tracks, where the speed capability is greater than 225km/h.

3.3.2.2 Weight limits

Maximum axle load

Train type	Maximum Operating speed	Maximum static load (Po)
International passenger (EMU)	300km/h	17t/axle
Domestic passenger (EMU)	230km/h	17t/axle
Loco hauled passenger	200km/h	22.5t/axle
Freight	140km/h	22.5t/axle

For detailed restrictions please refer to the Infrastructure Registers. Please refer to section 1.8 for NR(CTRL) contact details.

3.3.2.3 Line Gradients

The maximum gradient is 2.50% (1 in 40). Due to this maximum gradient, trains composed of vehicles fitted with standard UIC 85tonne couplings will be limited to a maximum trailing load of 1,100tonnes. Details of gradients along the route may be found in the CTRL Infrastructure Register. Please refer to section 1.8 for NR(CTRL) contact details.

3.3.2.4 Line Speeds

The maximum line speed is:

International Passenger	300km/h
Domestic Passenger	230km/h
Freight	140km/h

If domestic passenger trains or freight trains are proposed to operate in excess of 230km/h or 140km/h respectively, it must be demonstrated that the braking performance is consistent with the HS1 signalling requirements (block sectioning and that coupling strengths are adequate). Details of lower speed limits can be found in the CTRL Sectional Appendix.

Please refer to section 1.8 for NR(CTRL) contact details.

3.3.2.5 Maximum Train Lengths

Maximum train lengths (excluding Exceptional Transports):

International Passenger	400m
Domestic Passenger	276m
Freight	775m (incl. locomotive(s)). *

* local length restrictions below this figure may apply in the St. Pancras area, and will be confirmed at a later date.

3.3.2.6 Power Supply

Power is taken from the overhead catenary system (which is compliant to the Energy (High Speed) TSI at 25kV/50Hz AC. Exceptions are noted in the Infrastructure Register. The contact wire height above rail level is generally set at 5.08m. However, the wire height through Ashford International Station platforms is set at a minimum of 4.68m – please refer to NRIL for details on their Infrastructure limitations.

The principle characteristics of the traction power supply system are as follows:

Description	Performance
Nominal voltage	25kV
Maximum voltage (continuous)	27.5kV
Minimum voltage (continuous)	19kV
Nominal frequency	50Hz
Maximum fault current	12kA (6kA in St Pancras area)

Pantograph characteristics

Pantographs are to comply with EN 50206

The pantograph configuration must be in accordance with Annex H of the Energy TSI.

North Kent Line Connection, Waterloo Connection and Ashford connecting lines

Conventional NRIL 750V DC third rail system

3.3.3 Traffic Control and Communication Systems

The Ashford Control Centre (AFC) is the combined traffic control, signalling control, electrical control and communications centre for the HS1 and is responsible for all day to day railway operating activities.

3.3.3.1 Signalling Systems

TVM430 in-cab system is used throughout the HS1, except at interfaces with the NRIL Network, where TVM will interface with standard UK lineside signalling. St. Pancras International Station and its approaches are controlled by lineside signalling. Trains requiring to operate over the HS1 must be fitted with one or more of the following train control systems depending on routes required:

- ✓ TVM430 or ERTMS/ETCS with STM.
- ✓ For Waterloo Connection and Ashford connecting lines onto NRIL's Network, AWS/TPWS is needed.
- ✓ For St. Pancras International Station and its approaches, KVB is required. Please see 3.3.3.4 for more details.
- ✓ EMC Emissions must comply with adjacent NRIL and Eurotunnel requirements as well as those of the HS1. Please see NR(CTRL) contact details in section 1.8 for further information.

3.3.3.2 Traffic Control System

Trains are regulated according to train regulation policies agreed within the Track Access Agreements. Traffic is regulated by the management of real time performance.

RCC (Route Control Centre) operates the overall traffic management system which contains the following:

- ✓ Automated route setting
- ✓ Automated conflict resolution
- ✓ State of the art train graphing technology for perturbation management and very short term train planning (VSTP)

3.3.3.3 Communication System

Train radio communication systems

GSM-R is installed throughout the HS1, albeit currently, it is used only as a General Purpose radio. Until such time as GSM-R is implemented on HS1 for secure track-to-train radio, all trains must be fitted with Cab Secure Radio, complying with BR1845 Issue H (including the October 1995 amendment) and BR 1989 specifications.

Station communication systems

Public announcements via station data network, Proposed GSM-R radio system (TBC and subject to safety approval), Passenger Information System

3.3.3.4 Automatic Train Control Systems (ATCS)

The automatic train control systems on the HS1 are as follows:

Passenger trains operating on HS1	TVM 430 plus KVB
Freight Trains operating on HS1 except St Pancras	TVM 430 plus compatibility to operate APC magnets located on the infrastructure
Freight trains requiring access to St.Pancras	Only permitted under special arrangements
Trains intending to operate in addition across NRIL/ HS1 interface	AWS/TPWS compliant with Railway Group Standard GE/RT8030
Trains fitted with ERTMS/ETCS	STM required to interface with TVM 430

Please note that trains are not permitted to use regenerative braking on the HS1. Any such equipment must be isolated before the vehicle is permitted to operate on the HS1.

3.4 Traffic Restrictions

3.4.1 Specialised infrastructure

Following consultation, the HS1 has been declared as Specialised Infrastructure as described in Directive 2001/14/EC Article 24 and Regulation 22 of the Rail Regulations 2005. Please see 4.4.3 for more details.

3.4.2 Environmental Restrictions

HS1 environmental restrictions can be found using the NR(CTRL) contact details listed in section 1.8.

3.4.3 Dangerous Goods

Goods transported on HS1 will be subject to control based upon the principles and controls outlined in the CTRL Infrastructure Register. Please refer to Section 2.7 for further details of dangerous goods and Section 1.8 for NR(CTRL) contact details.

3.4.4 Tunnel restrictions

Tunnel restrictions on the HS1 apply as follows:

- ✓ Structure gauge. Please see 3.3.1.2 for further details.

- ✓ Emissions (particularly in respect of tunnels) must be assessed through Rolling Stock Acceptance Process – see section 2.8.
- ✓ Our tunnels have been designed for a certain aerodynamic specification. Please see section 1.8 for NR(CTRL) contact details.
- ✓ Fire detection and suppression in diesel locomotives hauling passenger trains.

3.4.5 Bridge restrictions

Bridge restrictions on the HS1 apply as follows:

- ✓ Must conform to structure gauge - see section 3.3.1.2.
- ✓ Maximum axle load - see section 3.3.2.2.
- ✓ In the event of extreme high winds (i.e. wind speeds over 160km/h) a speed restriction will be in place on Medway Viaduct. Please see section 1.8 for NR(CTRL) details.

3.5 Availability of the Infrastructure

For availability of the HS1 infrastructure, please refer to Rules of the Route in section 4.3.2.

3.6 Service Facilities

Train Formation Yards

Ripple Lane Exchange Sidings are to be controlled by NRIL and will not be part of the HS1 Network. There is a turnback siding located in Church Path Pit (Ebbsfleet Station): please refer to the CTRL Infrastructure Register for details. There is no driver access walkway from Church Path Pit between the station and sidings along the line-side.

Storage sidings

The IM will normally restrict access to the sidings listed below to Network Services or to defective rolling stock which is awaiting retrieval.

There is a locomotive siding at St. Pancras International Station: please refer to the Infrastructure Register for details.

There are head-shunts (i.e. short sidings which could be used for berthing of network service trains, crippled wagons etc.) at the country end of the Up Loop at Singlewell and at both ends of the Up Loop at Lenham Heath. Please refer to the Infrastructure Register for details.

Maintenance and Service Facilities

Technical facilities

From a date to be confirmed, Hitachi Europe Ltd will have facilities which can undertake berthing, light servicing, light and heavy maintenance of train sets which are compatible with Class 375, 395 and 465 units in Ashford Depot. That depot is not part of the HS1 Network and is only accessible from the HS1 Network via the NRIL Network.

From a date to be confirmed, Eurostar (UK) Ltd will have facilities which can undertake berthing, light servicing, light and heavy maintenance of train sets which are compatible with Class 373 units in Temple Mills Depot. That depot is not part of the HS1 Network.

Freight terminals

None available on the HS1

Conventional Freight terminals

None available on the HS1

Passenger stations

At St Pancras International Station, the following types of facilities apply:

- Watering – (for platforms 1 – 4 only) potable & non-potable

- Catering – for domestic and international trains
- Shore Supply – 4 South end and 4 North end of platforms 1 – 4 only

The above facilities are available subject to technical compatibility and do not include the services of staff to operate them. St Pancras, Stratford and Ebbsfleet International station services and passenger facilities are described in section 3.3.1.3.

3.7 Infrastructure Development

Section 2 of the HS1 (London St Pancras to Southfleet Junction) is currently under construction and is planned to open in 2007. Alterations to stations are planned before and after the Olympic Games in 2012. There are no capacity enhancement plans presently under consideration.

4 CAPACITY ALLOCATION

4.1 Introduction

NRIL manage capacity allocation as a sub-contractor to NR(CTRL) and those companies are currently reviewing Access Condition D. NR(CTRL) acts as the independent Allocation Body on behalf of CTRL(UK) Ltd and Union Railways (North) Ltd.

4.2 Description of Process

Allocation of capacity is achieved through Track Access Agreements between TOs and CTRL (UK) Ltd/Union Railways (North) Ltd. A Track Access Agreement provides a TO with the contractual rights to bid for a given quantum of pathways against pre-determined key characteristics of the train paths required. The capacity rights under a Track Access Agreement are translated into train slots in the timetable through the timetabling process. Details of the timetabling process are found in Part D of the CTRL Track Access Conditions. The NRIL National Rules of the Plan, which are consistent with the CTRL Track Access Conditions, contain a 'plain English' guide to the practical steps involved in compiling the timetable. Section 4.3.1 below gives an outline description of the capacity allocation processes used by NRIL on behalf of NR(CTRL) and in liaison with other Infrastructure Managers. The timetable is established annually in December, with mid-year adjustment in June.

Please note that the Rail Regulations 2005 Regulation 18(12) states that Track Access Agreements for the HS1 are not subject to the approval of the ORR.

4.3 Schedule for Path Requests and Allocation Process

4.3.1 Schedule for Working Timetable

Each February NRIL hosts a Timetabling Conference at which each TOs' service aspirations are reviewed in the light of known major projects, and the IM's maintenance and renewal requirements. HS1 capacity allocation is dealt with in this forum. Following the Conference each TO (and potential TO) is required to make a formal declaration of their aspirations for train paths and the rights (or additional rights they intended to seek) under a Track Access Agreement that they intend to exercise in support of those aspirations.

Following the Conference, TOs, NRIL and other IMs work together for a period of around 18 weeks to construct a draft timetable. NRIL seeks to deliver the TOs' aspirations but must ensure that the timetable is constructed in accordance with priorities and Decision Criteria which are set out in Part D of the CTRL Track Access Conditions. After a short period of fine-tuning and error correction, the final timetable is made available to TOs.

See 1.4.3 for information on disputes and appeals procedures.

The schedule of dates applicable to the main stages of the annual timetabling process is set out in NRIL's National Rules of the Plan Section 1, Appendix A.

NRIL are also members of RailNet Europe (RNE), the One Stop Shop (OSS) for European capacity. The HS1 is also discussed at this forum, which meets on a regular basis. In addition, NR(CTRL) currently host a timetable forum to integrate the international and domestic requests for capacity on the HS1. Please see NR(CTRL) contact details in section 1.8 for further details.

4.3.2 Schedule for Requests for train paths outside the timetabling process including ad hoc requests

To accommodate short term disruptive maintenance, renewal work and ad hoc train service requirements, the Working Timetable can be varied, by agreement, on a short-term basis. Changes due to engineering work are planned on a weekly basis with the objective of publishing such changes 12 weeks in advance of their operation. Ad hoc train service requirements, predominantly to meet variations in freight traffic, are typically planned during the week before operation and can be handled through the train planning process down to 48 hours notice.

Very Short Term Planning (VSTP) is handled directly by NR(CTRL), as referred to in section 3.3.3.2. These requests are made by the TOs directly to the AFC Shift Manager. Please see section 1.8 for NR(CTRL) contact details.

4.3.2.1 Rules of the Route

Rules of the Route are agreed between NRIL (on behalf of NR(CTRL)) and TOs each year through a consultation process prescribed by Part D the CTRL Track Access Conditions. HS1's Rules of the Route are then prepared by NR(CTRL) (as sub-contracted to NRIL) on behalf of CTRL (UK) and Union Railways (North) Ltd, and incorporated into the national process managed by NRIL.

Rules of the Route contain details of Restrictions of Use of the network due to maintenance, renewal and enhancement work. Details include dates, times, locations, lines affected in respect of possessions (temporary closure of parts of the network), temporary speed restrictions, temporary methods of working and any other restrictions of use.

Short-term changes relating to individual possessions on the network are agreed through a process set out in Section 3 of the National Rules of the Plan.

Please refer to section 4.3 for more information and/or section 1.8 for NR(CTRL) contact details.

A preliminary version of Rules of the Route for each time year is published by NRIL approximately one year in advance and is subject to formal consultation process with TOs and other Bidders. Rules of the Route are shown under the former Southern Region section of the document.

4.3.2.2 Rules of the Plan

Rules of the Plan are agreed between NRIL (on behalf of NR(CTRL)) and TOs each year through a consultation process prescribed by Part D of the CTRL Track Access Conditions. HS1's Rules of the Route are then prepared by NR(CTRL) (as sub-contracted to NRIL) on behalf of CTRL (UK) and Union Railways (North) Ltd, and incorporated into the national process managed by NRIL.

Rules of the Plan contain wide-ranging information required in timetable compilation such as standard timing points, sectional running times for specific train types, headway and margin limits to be maintained between trains, station working rules and route capability data. This information is compiled on a Regional basis. National Rules of the Plan contains a 'plain English' description of the timetable planning process together with details of the planning

schedule and requirements to be met in TOs' Bids for train paths. It also contains a procedure for agreement of short term changes to Rules of the Route and Rules of the Plan.

A preliminary version of Rules of the Plan for each timetable year is published by NRIL approximately one year in advance and is subject to formal consultation with TOs and other Bidders (see section 4.3 above for process schedule details).

4.4 Allocation Process

4.4.1 Co-ordination Process

Please refer to section 4.3.2.1 for process of allocation on the HS1. For further details, refer to section 1.8 for NR(CTRL) contact information.

4.4.2 Dispute Resolution Process

See 1.4.3 for information on disputes and appeals procedures.

4.4.3 Congested Infrastructure; Definition, Priority Criteria and Process

The HS1 is not presently a congested infrastructure. However, please refer to section 3.2.2 for connecting networks. Potential TOs should refer to the relevant IM Network Statement for further information on these networks.

NR(CTRL) will seek to avoid congestion by dealing with conflicts in access applications in accordance with the criteria set out in the declaration of specialised infrastructure (subject to its successful consultation) and the procedures described in Regulations 20 and 21 of the Rail Regulations 2005 and in Section 4.6 below.

As per Rail Regulations 2005, regulation (22), NR(CTRL) HS1 has been declared as Specialised Infrastructure. The effect of such declaration is that the HS1 infrastructure is designated for use by specified types of rail service (without prejudice to articles 81, 82 & 86 of the Treaty) and NR(CTRL) may give priority to that specified type of rail service in the allocation of infrastructure capacity. The priorities will be as follows, with the designated types of trains taking precedence in the following order:

- ✓ High speed international passenger trains
- ✓ High speed domestic passenger trains
- ✓ High speed freight trains
- ✓ Other trains

This prioritisation will apply except for the duration of the special timetable to be introduced for the Olympic Games in 2012, when the order will be:

- ✓ High speed domestic passenger trains
- ✓ High speed international passenger trains
- ✓ High speed freight trains
- ✓ Other trains

In this context, a high speed train is one which is capable at travelling at more than 95% of the maximum speed permissible for its class specified in the Infrastructure Register. For ease of reference, the specified speeds are as follows:

- | | |
|--|----------|
| ✓ International passenger trains which are not locomotive-hauled | 300 km/h |
| ✓ Domestic passenger trains which are not locomotive-hauled | 230 km/h |
| ✓ Locomotive-hauled passenger trains | 200 km/h |
| ✓ Freight trains | 140 km/h |

If congestion remains, NR(CTRL) may levy congestion charges and will proceed in accordance with Regulation 23 of the Rail Regulations 2005 and if necessary will decide which party(ies) are given priority with consideration to all the circumstances of the case, which shall include (without limitation):

- ✓ The decision criteria in Part D of the CTRL Track Access Conditions.
- ✓ The relative value to society at large of the competing proposals, particularly if one of the competing services is a freight service and/or an international service.
- ✓ The relative disruption of the competing proposals to all users and Infrastructure Managers of the HS1 and other Networks.
- ✓ The relative value to the HS1 infrastructure owners of the competing proposals.
- ✓ The willingness to pay a congestion charge.

4.4.4 Impact of Framework Agreements

Framework agreements confer to the TO rights to certain numbers of paths, but there are no particular levels of priority of capacity allocation which accrue directly as a result. EUKL presently hold a framework agreement.

4.5 Allocation of Capacity for Maintenance, Renewal and Enhancement

Opportunities for NR(CTRL) Ltd and its contractors to carry out maintenance, renewal and enhancement work on the network are set out in the HS1 Rules of the Route; these are normally carried out in specified non-train periods (set out as Section 4 in Rules of the Route). details are listed in 4.3.2.1 above.

4.5.1 Process

Please refer to section 4.3.2.1 for details of the process.

4.6 Non-Usage/Cancellation Rules

When there is no congestion, the limit for non-usage of capacity allocation which would trigger loss of access will be 0% per month. If ad hoc applications are made for the use of capacity allocation of which has not been used, then the Allocation Body shall consult the TO whose allocation is in question, the applicant and any other party who would be affected were the allocation to be changed. If there is congestion, and in the absence of a good reason, if the usage in any month between the start of the latest allocation and the date of application for re-allocation is less than 30%, such applications shall succeed and such capacity shall be removed from the party to which it was allocated for such period as the Allocation Body considers appropriate. In coming to such decision, the Allocation shall take account of non economic reasons, consider seasonal traffic flows, the reasonableness of the conduct of the TOs concerned and all other relevant factors identified by the TOs or the Allocation Body. In any event, the Allocation Body shall not remove capacity allocation beyond the end of the timetable year in question without the agreement of the TO who would lose capacity as a result.

See also section 6.1 for the effects on charging of these processes, and section 4 above for Capacity Allocation (specifically, the Allocation Body information).

4.7 Exceptional Transports and Dangerous Goods

The TO is obliged to state whether the transport that it wants to run has a load of such nature that they must be run as an exceptional transport, or if the individual train is carrying dangerous goods as well as if the train itself is classified as a danger class. Please refer to sections 2.6 and 2.7 for further details.

4.8 Special Measures to be taken in the Event of Disturbance

4.8.1 Principles

Procedures and contractual arrangements for special measures can be found in CTRL Track Access Conditions, Part H. NR(CTRL) AFC Shift Manager will control this process via the AFC Manual. Please see section 1.8 for NR(CTRL) contact details.

4.8.2 Operational Regulation

Train regulation policies for disruptive events can be found in CTRL Track Access Conditions, Part H. This document describes:

- ✓ Actions to restore working timetable
- ✓ Requirements to comply with reasonable NRIL instructions
- ✓ Contingency Plans
- ✓ Codes of Practice
- ✓ Amended timetable
- ✓ Train Regulation Statements

Please refer to section 1.8 for NR(CTRL) contact details.

5 SERVICES

5.1 Introduction

The HS1 only provides traction current, certain shore supplies at stations and the minimum access package in the context of Services section of the Network Statement (section 5).

5.2 Minimum access package

Minimum access package charges cover the IM's costs of the following:

- ✓ Handling of requests for infrastructure capacity.
- ✓ Responding to initial route acceptance procedures (route acceptance may incur additional charges if rolling stock or types of goods conveyed alter following the initial application).
- ✓ Calculation of track and station access charges and performance payments.
- ✓ Entering into track and station access agreements, performance agreements and any other necessary agreements.
- ✓ The right to track and station access subject to the allocation of capacity.
- ✓ The right to the use of running track, points and junctions.
- ✓ Train control at control centres including signalling, regulation, dispatching.
- ✓ Services of local staff to assist in the resolution of perturbation to the extent they are available.
- ✓ Use of available communications systems and provision of information on train movements.
- ✓ All other information required to implement or operate the service for which capacity has been granted.

5.3 Track access to services facilities and supply of services

Track access to service facilities and supply of services applies as listed below. Please refer to Section 6 for charges.

5.3.1 Use of electrical supply equipment for traction current, where available

Please see section 3.3.2.6 for further details. These services are provided by the IM and its contractors.

5.3.2 Refuelling facilities

Does not apply to the HS1

5.3.3 Passenger stations, their buildings and other facilities

Please see section 3.6 for further details. These services are provided by the IM.

5.3.4 Freight terminals

Does not apply to the HS1

5.3.5 Marshalling yards

Does not apply to the HS1

5.3.6 Train formation facilities

Does not apply to the HS1, but Ripple Lane and Dollands Moor Yard are available via the HS1 although access is granted by the respective facility owner, see 1.8 for NR(CTRL) contact details.

5.3.7 Storage sidings

Please see section 3.6 for further details. These services are provided by the IM.

5.3.8 Maintenance and other technical facilities

As discussed in section 3.6, Track access is available via the HS1 to Temple Mills Depot for Class 373 electric multiple units. Track access will also be available, via NRIL's Network, to a new depot for Class 395 trains being constructed at Ashford.

5.4 Additional Services

Additional services on the HS1 apply as listed below. Please see section 6 for more information on charges for these services.

5.4.1 Traction current

Please refer to section 3.3.2.6 for details. These services are provided by the IM and its contractors.

5.4.2 Supply of fuel

Does not apply to the HS1.

5.4.3 Services for trains (preheating, water supply, toilet waste handling, etc)

There are catering shore-base facilities, shore supplies for watering and pre-heating of trains at stations as set out in Section 3.6 above subject to the available capacity and technical compatibility. These facilities are provided by the IM, but if TOs wish to use them, they will need to make their own arrangements to customise the facilities to their own requirements and to operate them.

5.4.4 Shunting and other services

A diesel locomotive is planned to be available on a call out basis from a date to be confirmed with the capability to rescue failed trains with compatible technical characteristics.

5.4.5 Services for exceptional transports and dangerous goods

A risk assessment service in respect of the compatibility with the infrastructure will be available as part of the route acceptance procedure for exceptional transport and dangerous goods. These services are provided by the IM and its contractors.

5.4.6 Any other additional services

From a date to be confirmed, Eurostar (UK) Ltd (EUKL) will have facilities which can undertake berthing, servicing, light and heavy maintenance of train-sets which are compatible with Class 373 units in Temple Mills Depot. That depot is not part of the Network controlled by NR(CTRL) Ltd.

From a date to be confirmed, Hitachi Europe Ltd will have facilities which can undertake berthing, servicing, light and heavy maintenance of train-sets which are compatible with Class 395 units in Ashford Depot. That depot is not part of the Network controlled by NR(CTRL) Ltd and is only accessible from the HS1 Network via the NRIL Network.

5.5 Ancillary Services

5.5.1 Access to telecommunication network

Access to the telecommunication network is granted to TOs by the IM subject to availability, capacity and the route acceptance process for the purposes of train and station operations only. These services are provided by the IM and its contractors.

5.5.2 Provision of supplementary information

Access to passenger information is granted by the IM to TOs subject to availability, capacity and technical compatibility for the purposes of train and station operations only. These services are provided by the IM and its contractors.

5.5.3 Technical inspection of rolling stock

Does not apply to the HS1

5.5.4 Any other ancillary services

Police services for the stations and railway infrastructure are procured by the IM. TOs make their own arrangements for policing on trains. International policing and security arrangements apply for international TOs who must make their own arrangements in that regard except at HS1 Stations.

Vehicle Health Monitoring Equipment (VHME) is provided on the HS1. Please see section 1.8 for NR(CTRL) contact details.

6 CHARGES

6.1 Charging Principles

The HS1 is not regulated in the same way as the NRIL Network. A framework for charging is set by the Secretary of State for Transport through the CTRL Development Agreement and the Secretary of State has an obligation under the Rail Regulations 2005 to supervise negotiations on charging matters and to intervene if considered necessary.

6.1.1 Charge for Minimum Access Package

TOs who have yet to commence operations on the HS1 will be subject to charges for the minimum access package. Such charges will reflect the actual costs of the services provided which are directly incurred as a result of the train services to which the package applies. Please see section 6.2.

6.1.2 Track Access Charging Principles

Section 2 of the HS1 is still under construction and until the costs of its construction, maintenance and operation have emerged, it will not be possible to predict accurately the track access charges. The principles for charging for track access will result in equivalent and non-discriminatory charges for different railway undertakings that perform services of an equivalent nature in a similar part of the market. In compliance with Rail Regulations 2005, the charges shall account for the costs of operating, maintaining and the construction of the HS1. The calculation of the charges may also take into account the mileage travelled by services on the HS1, the speed, composition, weight and suspension characteristics of the trains involved.

6.1.3 Station Access Charging Principles

Section 2 of the HS1 is still under construction and until the costs of its stations' construction, maintenance and operation have emerged, it will not be possible to predict accurately the station access charges. The principles for charging for station access will result in equivalent and non-discriminatory charges for different railway undertakings that perform services of an equivalent nature in a similar part of the market.

6.1.4 Test Trains

Track access for test trains shall normally be granted under a separate track access agreement which shall not set any precedent for any such agreements for service trains.

Charges will cover operational maintenance, renewal and management costs and all other costs arising from and in connection with the running of the HS1 except those associated with minimum access packages. The charges for TOs of test trains will be determined on a marginal basis and costs of traction power drawn by electric locomotives will be attributed in arrears.

The charges will include the costs incurred by the IM or its contractors in performing tests or undertaking observations concerning the operation of HS1 infrastructure assets of any type arising from or in connection with the operation of a test train and for a rate of return. The TO shall be liable for such costs and any route acceptance costs chargeable by the IM of an adjacent Network which could be affected by the operation of the test train and shall be responsible for entering into contract directly with such other IM as may be necessary.

The TO of a test train shall be liable to indemnify the IM from any costs arising from or in connection with damage to HS1 infrastructure assets or to such assets of another Network caused by the test train whether or not by negligence of the TO, its staff, contractors or agents.

6.1.5 Infrastructure Enhancement

If any infrastructure enhancements are required to facilitate operation of services, a separate agreement will be reached regarding funding with the TO.

6.1.6 Congestion

The independent Allocation and Charging Body may levy such congestion charges as it considers meets the needs of the circumstances, commensurate with the principles set out in section 4.4.3. The Allocation and Charging Body may hold an auction if it considers this would be suitable as a means of breaking a deadlock which cannot be resolved after consideration of those principles, or for other good reason.

6.1.7 Track access to facilities referred to in 5.3

To the extent that this applies to the HS1, the charges shall be determined as part of the process described in section 6.1 and included therein.

6.1.8 Services referred to in section 5.3

Where such charges are not an integral part of track and station access charges and the services are provided by or on behalf of the Infrastructure Owners, they shall account for the competitive position of rail transport to the extent required by the Rail Regulations 2005.

The charges for equipment supplying and controlling electric current for traction shall be determined as part of the process described in section 6.1 and included therein.

The charges for additional services and facilities provided in stations shall be subject to negotiation.

6.1.9 Additional services

Where such charges are not an integral part of track and station access charges and the services are provided by or on behalf of the Infrastructure Owners, they shall account for the competitive position of rail transport to the extent required by the Rail Regulations 2005.

The charges for electric current for traction and rescue locomotives shall be determined as part of the process described in section 6.1 and included therein.

Any services provided by Eurostar (UK) Ltd or Hitachi Europe Ltd at Temple Mills or Ashford Depots shall be a matter between the applicant and those companies but the infrastructure owners and NR(CTRL) Ltd will use all reasonable endeavours to facilitate the supply of any services requested.

The charges for route acceptance services shall be determined as part of the process described in section 6.1 and included therein.

The charges for additional services and facilities provided in stations shall be subject to negotiation.

6.1.10 Ancillary Services

To the extent that this applies to the HS1, the charges for ancillary services shall be determined as part of the process described in section 6.1 and included therein.

6.1.11 Non-usage or cancellation

Any TO shall remain liable for the charges that would have been levied upon it for any track or station access or services provided by or on behalf of the Infrastructure Owners but not used by it except that if the independent Allocation and Charging Body is able to recover any charges from another TO who takes up the unused capacity, then such charges as are recovered shall be refunded to the TO whose allocation was redeployed, less a 1% handling fee.

6.2 Charging System

The charges for capacity granted though the annual capacity allocation process has been completed will be ascertained and applied before the start of every timetable period, and will normally apply for its duration, except that EC4T charges will be attributed in arrears.

Charges for minimum access packages (as described in 5.2) shall be subject to an advanced payment on account, the balance being payable when the track access agreement has been executed and route acceptance procedures are completed.

Track and station access charges for capacity granted in response to ad hoc requests will be billed in accordance with the relevant agreements which will be framed in terms of the charging principles.

6.3 Tariffs

6.3.1 Minimum access package

The scale of charges to TOs will be calculated upon receipt of an application enclosing sufficient details for the charges to be assessed using the method described above. As the charges will depend on the nature of the services and rights sought, it is not practicable to publish them in this document. However, they will be calculated in accordance with the principles set out above and the independent Allocation and Charging Body will be pleased to enter into discussions with serious applicants.

6.3.2 Track and Station Access

In the light of the continuing construction project, these charges are still being reviewed and will be published as soon as possible. They will be calculated in accordance with the principles set out above and the independent Allocation and Charging Body will be pleased to enter into discussions with serious applicants.

6.3.3 Track access to services facilities

Charges for track access on the HS1 Network to such facilities as are available are included in the charges described in section 6.1

6.3.3 Supply of services referred to in 5.3

To the extent that they are available, charges for such services are included in the charges described in section 6.1.

6.3.4 Additional services

To the extent that they are available, charges for such services as the IM supplies are included in the charges described in section 6.1.

Charges for the use of Temple Mills and Ashford depots will be available upon application to the companies concerned subject to the development of the information in light of the construction projects involved.

TOs who change their rolling stock or goods conveyed after their services have begun will pay the costs arising as a lump sum. Such charges will reflect the actual costs of the services provided which are directly incurred as a result of the train services to which the package applies. Please see section 6.2.

6.3.5 Ancillary services

To the extent that they are available, charges for such services are included in the charges described in section 6.1.

6.4 Performance Scheme

The Performance Scheme currently in use on Section 1 of the HS1 is based on the NRIL performance regime and will be in force until the start of commercial passenger services on Section 2. From the date of that event onwards, the Performance Scheme in use will be a bespoke scheme which is similar to the NRIL template in some respects but which is different in others. These arrangements will be used as the template for any TO who applies for track access, except for the purposes of Network Services,

The Performance Scheme on HS1 is designed to keep delay to a minimum for all users and is required for all TOs on HS1. Below we briefly describe the basic principles of the CTRL Performance Regime including; benchmark, payment rates, attributable incidents, role of delay and lateness in the regime, cap, and intended incentive properties of the regime.

6.4.1 Benchmark

Under both Performance Schemes, the benchmark will be negotiated or decided by dispute resolution (see section 1.4.3), with a view to achieving cost neutrality to both parties of the scheme if they perform to their benchmark levels of performance, upon the basis of:

- ✓ predicted performance and reliability of trains
- ✓ actual performance and reliability of trains if data is available, or predictions if not
- ✓ predicted performance and reliability of the HS1 infrastructure
- ✓ actual performance and reliability of the HS1 infrastructure if data is available
- ✓ the working timetable on the HS1
- ✓ the manner of attribution of Minutes Delay and Cancelled Stops to the parties

6.4.2 Payment Rates

For the Performance Scheme that applies before the start of commercial international passenger services on Section 2, reciprocal payment rates will be set at a level which compensate the TO for the costs, direct losses and expenses which can reasonably be expected to be incurred by the TO as a result of delays, interruptions and cancellations to or terminations of trains.

For the Performance Scheme which applies after that event, reciprocal payment rates will be set by negotiation or by dispute resolution with reference to the costs, direct losses and expenses which can reasonably be expected to be incurred by the TO as a result of delays, interruptions and cancellations to or terminations of trains compared to those of other TOs using the HS1 at the time.

6.4.3 Role of Delay and Lateness in the Regime

The regime is designed to compensate for lateness as opposed to delay. Lateness is the difference between the planned time of arrival at a particular point and the actual time. Delay, being the actual time lost in running, is used in the regime to establish the share of responsibility for lateness minutes between TOs and the Infrastructure Manager.

HS1 uses the same delay measurement systems as NRIL. Delay is recorded and attributed to incidents which are then reviewed and agreed by both parties. This data is then used to calculate the payments of compensation to either party related to levels of performance above and below the benchmark level.

Differences exist between the two Performance Schemes concerning which events count as causes of delay which are to be attributed to the TO and the Infrastructure Manager and concerning the calculation methods. Details are available upon application.

6.4.4 Cap

Caps on monies exchanged between parties in each year will be negotiated in accordance with the performance agreement in a similar way to the payment rates, or determined by dispute resolution, with reference to the annual caps of other TOs using the HS1 at the time.

6.5 Changes to charges

The principles and system of charging on HS1 is described in 6.1 and 6.2 of this document. These sections will be updated as foreseen charges are known. Specific details of each TO's charging regimes are included in Schedule 7 of their relevant Track Access Agreement.

For the avoidance of doubt, changes in the law, its interpretation and detailed application are considered as not foreseeable. If changes to the essential elements of the charging system become necessary, consultation shall be held to the extent and in the manner required by the Rail Regulations 2005.

6.6 Billing arrangements

CTRL (UK)/Union Railways (North) Ltd will invoice the TO in accordance with the terms and conditions agreed in their access and performance agreements, based on information supplied by NR(CTRL) Ltd.

Terms and conditions relating to non-payment or late payment are set out in the relevant agreements.

Appendix 1

Glossary of Terms

AFC	Ashford Control Centre
ALARP	As Low As Reasonably Practicable
Allocation & Charging Body for the CTRL	Network Rail (CTRL) Ltd
Applicant	An entity that wants to apply for a train path
APC Magnets	Automatic Power Control magnets
ATC	Automatic Train Control
ATPS	Automatic Train Protection Systems
AWS	Automatic Warning System
CTRL (UK) Ltd	Channel Tunnel Rail Link (UK) Limited. Infrastructure owner (and for the purposes of the Rail Regulations 2005, Infrastructure Manager) of the Section 1, Channel Tunnel Rail Link.
The CTRL	The Channel Tunnel Rail Link - the highspeed railway
CAHA	Claims Allocation & Handling Agreement
EC4T	Electric Current for Traction
EDFE	Electricite de France Energy – Private Networks
ERTMS	European Rail Traffic Management System
ETCS	European Train Control System
Eurostar	Eurostar (UK) Ltd, a Train Operating Company
Eurotunnel (ET)	The Infrastructure Manager of the Channel Tunnel
EWS	English Welsh and Scottish Railway Ltd
HMRI	Her Majesty's Railway Inspectorate
HS1	High Speed 1, formerly known as the CTRL.
Infrastructure Manager (IM) for Rail Regulations 2005	In the context of the HS1, CTRL(UK) Ltd and Union Railways (North) Ltd.
Infrastructure Manager (IM) for ROGS Regulations	In the context of the HS1, Network Rail (CTRL) Ltd.
KVB	Controle de vitesse par balises – Speed supervision by beacons
LCR	London Continental Railways. Parent company of URN & CTRL(UK).
LCSP	London & Continental Station & Property
LSEER	London & South Eastern Railway Co., the holder of the Integrated Kent Franchise
ORR	Office of the Rail Regulation
OSS	One Stop Shop
NR(CTRL) Ltd	Network Rail (CTRL) Ltd, a subsidiary of NRIL, service provider to the infrastructure owners/station operator and Allocation and Charging Body for the HS1
NRIL	Network Rail Infrastructure Limited, sometimes read as Network Rail.
Possessions	Restriction of use of railway infrastructure assets
Rail Regulations 2005	Railways Infrastructure (Access & Management) Regulations 2005
RID	Carriage of dangerous goods
RNE	RailNetEurope – Association of European Rail Infrastructure Managers with the aim of developing international rail traffic

	through cooperation in the planning and sale of train paths.
ROGS Regulations	Railways and Other Guided Transport (Safety) Regulations 2006,
Rolling Stock	Wheeled vehicles capable of movement on a railway, whether self-propelled or not.
Railway Undertaking (RU)	Any public or private undertaking, licensed according to applicable community legislation.
Section 1 HS1	Portion of highspeed railway that runs between Fawkham Junction/Southfleet Junction to Cheriton (Eurotunnel Boundary)
Section 2 HS1	Portion of highspeed railway that will run between London St Pancras to Southfleet Junction. Due to open in 2007.
SNRP	Statement of National Regulatory Provisions
Station Facility Operator	Network Rail (CTRL) Ltd (Subject to contract)
Station Facility Owner	Union Railways (North) Ltd
STM	Special Transmissions Module
Track Access Agreement	Agreement between IM and TO for use of railway (TAA)
TAC	Track Access Conditions
TO	Transport Operator
TPWS	Train Protection Warning System
TU	Transport Undertaking
UIC	Union Internationale des Chemins de fer.
URN	Union Railways (North) Ltd, Infrastructure owner (and for the purposes of the Rail Regulations 2005, Infrastructure Manager) of Section 2, HS1.
VHME	Vehicle Health Monitoring Equipment
VSTP	Very Short term Train Planning

Appendix 3

Sectional Appendix dated December 2008

	CTRL Level Two Standard
	C/OP/OS/05/2002
	December 2008

CTRL Sectional Appendix

Module A

Route information

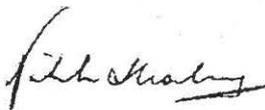
This module gives the route information for the CTRL for use by drivers (and others). It replaces Part 1 of the CTRL Sectional Appendix, dated July 2007.

Prepared by



.....
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Authorised by:



.....
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(CCMS 8162760)

Table of Contents

- 1. **Table A** Pages A3 to A25
- 2. **Gradient profile** Pages A26 to A35

REVISION HISTORY		
December 2008	Initial issue. Replaces Part 1 of the CTRL Sectional Appendix, dated July 2007	AC

Explanation of Table A terms and symbols

General

The running lines of the CTRL are represented in diagrammatic format. All information is shown with the 'Down' direction being down the page and the 'Up' direction being up the page, unless indicated otherwise. The Line of Route Reference (LOR) and appropriate Engineer's Line Reference(s) (ELR) is shown at the top of each page.

The main CTRL route is shown continuous from St. Pancras International station on page A6 through to the CTRL/Eurotunnel interface on page A25. The various connecting and chord lines are shown adjacent to the main route on the appropriate pages.

All CTRL running lines are bi-directional and equipped with Overhead Line Equipment (OHLE) at 25,000 kV AC, unless indicated otherwise.

Location column

Station names are shown thus: "ST. PANCRAS INTERNATIONAL"

Tunnel and viaduct names are shown thus: "PEPPER HILL TUNNEL" together with the length in metres.

Other locations, points of reference, etc. are shown thus: "Regents Canal Jn."

Locations shown thus: (Cedar Jn.) or [Signal AF041] are not on the main CTRL route but on a connecting or chord line, as shown either in the Location or Remarks column.

Overhead Line Equipment Neutral Section locations are shown thus: "OHNS".

Vehicle Health Monitoring Equipment locations are shown thus: "VHME".

A ① or ② symbol against a location indicates that additional information can be found in the Remarks column.

Kilometerage (Km) column

Distances on the main CTRL route are shown in kilometres and metres based on a '0' datum point at St. Pancras International station. Kilometerages shown thus (20.253) or [0.643] are not on the main CTRL route but on a connecting or chord line, as indicated either in the Location or Remarks column.

Where the kilometerage datum point changes at a junction, the entry is shown thus:

$$\frac{0.901}{(0.000)}$$

Running lines column

This contains a diagrammatic representation of all running lines and associated connections, but is not to scale.

The symbols are explained in diagrammatic format on page A5.

The maximum permitted speed for each running line is shown in kilometres per hour (km/h).

In those areas controlled by the cab signalling system, the maximum permitted speed is displayed to the driver by the indication in the driving cab. This may be lower than the maximum permitted speed shown in this Table A. The maximum permitted speed displayed to the driver by the cab signalling system takes into account the physical characteristics of the traction unit concerned, e.g. suspension, braking rate, acceleration rate, length of train, etc. The driver must **not** exceed the speed displayed by the cab signalling indication, even though this Table A may show a higher maximum permitted speed.

In those areas controlled by the lineside colour light signalling system, the maximum permitted speed is displayed to the driver by means of the Permissible Speed Indicators shown in Module S3 of the CTRL Rule Book. At those locations that interface with Network Rail, the Permissible Speed Indicators display the maximum permitted speed in both km/h and mph. These dual speeds are shown in this Table A as follows:

40
(25)
(mph)

The location where the maximum permitted speed changes is indicated by a * symbol, and the kilometrage shown in the Km column with a further * symbol.

Lines controlled by an adjacent infrastructure manager are shown for information purposes only. For full details, refer to the documentation of the infrastructure manager concerned. Lines controlled by Network Rail have the appropriate Table A page in the Network Rail Sectional Appendix referenced.

Remarks column

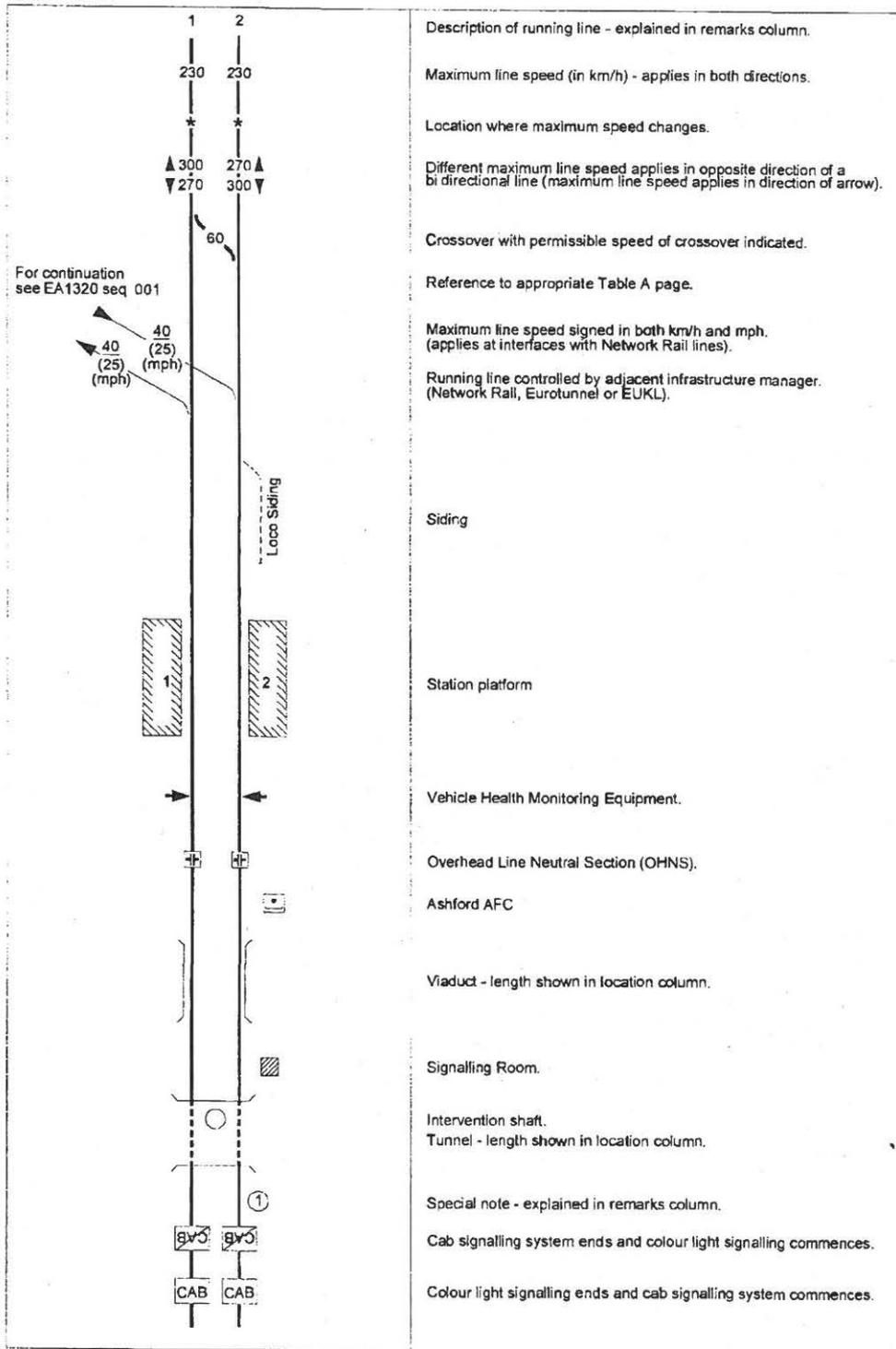
The remarks column contains the following information on each page:

- Controlling signalling centre plus mode of signalling.
- Type of electrification plus electrical control responsible (AC = 25,000v AC OHLE or OLE) (DC = 750v conductor rail, where applicable).
- Descriptions of running lines.

And, where appropriate:

- Restrictions on the routing of trains.
- Special authorities.
- Reference to other modules of this Sectional Appendix, where more detailed information may be obtained.
- Other information.

Sectional Appendix - Module A



- Description of running line - explained in remarks column.
- Maximum line speed (in km/h) - applies in both directions.
- Location where maximum speed changes.
- Different maximum line speed applies in opposite direction of a bi directional line (maximum line speed applies in direction of arrow).
- Crossover with permissible speed of crossover indicated.
- Reference to appropriate Table A page.
- Maximum line speed signed in both km/h and mph. (applies at interfaces with Network Rail lines).
- Running line controlled by adjacent infrastructure manager. (Network Rail, Eurotunnel or EUKL).
- Siding
- Station platform
- Vehicle Health Monitoring Equipment.
- Overhead Line Neutral Section (OHNS).
- Ashford AFC
- Viaduct - length shown in location column.
- Signalling Room.
- Intervention shaft.
- Tunnel - length shown in location column.
- Special note - explained in remarks column.
- Cab signalling system ends and colour light signalling commences.
- Colour light signalling ends and cab signalling system commences.

LOR	Seq.	Line of Route Description	ELR	Route	Last Updated
SO400	001	St Pancras International to Eurotunnel Interface	TRL1 RDO1	CTRL	06/12/08
Location	Km	Running lines		Remarks	
ST PANCRAS INTERNATIONAL	0 00			CTRL Colour light signaling Ashford AFC Electrification AC: Ashford AFC	
Platform 5-10 buffer stops				Midland Mainline (MML) Signalling West Hampstead SB Electrification AC: York	
Limit of Barlow train shed	0 214			Platforms 5-10 To be used by class 9 International services only, except in an emergency (see Module C of this Sectional Appendix).	
Platform 11-13 buffer stops	0 228			Platforms 11-13 To be used by classes 1, 2 & 5 domestic services only. Permissive working for attaching/detaching purposes only authorised. Not open to public.	
Platform 5-10 limits	0 433			Works trains/OTMs/OTPs are authorised to work on all platform lines subject to the restrictions shown in Module C of this Sectional Appendix.	
Platform 11-13 limits	0 523	Class 4 & 6 freight trains are prohibited from all CTRL lines in this area.			
Regents Canal Jn	0 790	40 (25) (mph) 40 1 40 2 40 3 For continuation see LN3201 Seq 1 4 5 1 CTRL Relief 2 Up CTRL 3 Down CTRL 4 Up Fast (MML) 5 Down Fast (MML)		CSR 	

LOR	Seq.	Line of Route Description	ELR	Route	Last Updated
SO400	002	St Pancras International to Eurotunnel Interface	TRL1 ISL1 ISL2 TRL9	CTRL	06/12/08
		Location	Km	Running lines	Remarks
		Regents Canal Jn	0 790 *		<p>CTRL</p> <p>Colour light signalling Ashford AFC Electrification AC: Ashford AFC</p> <p>CSR</p> <p>92</p> <p>Midland Mainline (MML)</p> <p>Signalling West Hampstead SB Electrification AC: York</p> <p>Kilometerages shown () are on the Silo Curve. Locations and kilometerages shown [] are on the NLL Connection.</p> <p>Cedar Jn (1) Camden Road Incline Jn (2) and Camden Road Central Jn (3) are controlled by Camden Road Jn signal box.</p> <p>ECML Connection, NLL Connection and Silo Curve not in regular use. Instructions shown in Module D of this Sectional Appendix to be applied.</p> <p>Note NLL Connection is Up Direction from Cedar Jn (1) to Camden Road Incline Jn.</p> <p>AC electrification on North London Incline and ECML Connection controlled by Rugby ECO.</p> <p>Freight trains are authorised on the North London Line connection only.</p> <p>1 CTRL Relief 2 Up CTRL 3 Down CTRL 4 East Coast Mainline (ECML) Connection 5 North London Line (NLL) Connection 6 North London Incline 7 Up North London Line (NLL) 8 Down North London Line (NLL) 9 Up & Down Slow (MML) 10 Up Fast (MML) 11 Down Fast (MML)</p>
		OHNS ECML Connection	0 901 (0 000) 0 973		
		(Signal AF026 - Silo Curve)	(0 175)		
		Signal AF028 - ECML Connection (Signal CR1119 - Silo Curve) (Signal CR1117 - NLL Connection) (1) (Cedar Jn)	1 080 (0 195) (0 461) (0 305)		
		[OHNS NLL Connection]	(0 522) (0 643)		
		(2) [Camden Road Incline Jn]	(0 705)		

LOR	Seq.	Line of Route Description	ELR	Route	Last Updated
SO400	003	St Pancras International to Eurotunnel Interface	TRL1 TRL2 TRL9 ISL1	CTRL	06/12/08
		Location	Km	Running lines	Remarks
				<p>The diagram shows 11 running lines. Lines 1, 2, 3, 4, and 5 are the main lines. Lines 6-9 are branches. Lines 10 and 11 are the North London Line. Speed limits are indicated: 80 mph for lines 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11; 40 (25) mph for lines 1, 2, 3, 4; 30 (20) mph for line 3. Signal locations are marked with 'S' and 'R' symbols. A '1' symbol is also present on line 5.</p>	<p>CTRL</p> <p>Colour light signalling Ashford AFC Electrification AC: Ashford AFC</p> <p>East Coast Mainline (ECML) Signalling Kings Cross SB Electrification AC: York</p> <p>North London Line (NLL) Signalling Camden Road Jn SB Electrification AC: Rugby DC: Romford</p> <p>① York Way North Jn is controlled by Kings Cross signal box.</p> <p>Locations and kilometers shown () are on the ECML Connection. Kilometers shown [] are on the NLL Connection.</p> <p>ECML Connection and NLL Connection not in regular use. Instructions shown in Module D of this Sectional Appendix to be applied.</p> <p>AC electrification on North London Incline and ECML Connection controlled by Rugby ECO.</p> <p>1 Up CTRL (line party 1) 2 North London Line (NLL) Connection 3 Down CTRL (line party 2) 4 East Coast Main Line (ECML) Connection 5 North London Incline 6 No 1 Slow (ECML) 7 No 2 Slow (ECML) 8 No 1 Fast (ECML) 9 No 2 Fast (ECML) 10 Down North London Line (NLL) 11 Up North London Line (NLL)</p>
		(Signal K259 - ECML connection)	(1 250 *		
		(Signal AF041 - NLL Connection)	[0 153]		
		St Pancras Signalling Room (SR10)	1 350		
		① (York Way North Jn)	(1 382)		
		York Way South Jn	1 409 [0 000]		
		ECML Bridge (covered) portal	1 425		
		Signal AF047 - Up Line	1 501		
		Signal AF045 - Down Line	1 522		
		Gifford Street Portal - Up Line (signal AF048 + [CAB])	1 540		
		Gifford Street Portal - Down Line (signal AF046 + [CAB])	1 562		
		LONDON TUNNEL 1 (7539m)	1 600 *		

LOR	Seq.	Line of Route Description	ELR	Route	Last Updated
SO400	004	St Pancras International to Eurotunnel Interface	TRL2	CTRL	06/12/08
Location	Km	Running lines		Remarks	
				CTRL TVM430 cab signalling Ashford AFC Electrification AC: Ashford AFC High Meads Loop Signalling Liverpool Street IECC Electrification AC: Romford	
CAB boards - both lines	1 830 *			CSR 	
Corsica Street Emergency Response Location (ERL) OHNS - both lines	2 686 2 950 3 059				
Corsica Street Intervention Shaft LONDON TUNNEL 1 (7538m)	3 130				
	4 386 *				
Graham Road Intervention Shaft Graham Road Emergency Response Location (ERL)	5 897 5 973 6 373				
Stratford Portal	9 078				
Stratford International West Jn	9 095				
Stratford Signalling Room (SR12)	9 135				
	9 381				
		For continuation see EA1350 Seq 1 For continuation see EA1350 Seq 1		1 Up CTRL (line parity 1) 2 Down CTRL (line parity 2) 3 Up International (line parity 1) 4 Up RDO (line parity 1) 5 Temple Mills Link Line (line parity 2) 6 Down RDO (line parity 2) 7 Down International (line parity 2) 8 Down High Meads Loop 9 Up High Meads Loop	

LOR	Seq.	Line of Route Description	ELR	Route	Last Updated
SO400	005	St Pancras International to Eurotunnel Interface	TRL2 TMD1	CTRL	06/12/08
		Location	Km	Running lines	Remarks
		Platform 2 & 3 limits	9 381		<p>CTRL</p> <p>TVM430 cab signalling Ashford AFC Electrification AC: Ashford AFC</p> <p>CSR</p> <p>92</p> <p>Temple Mills Lines</p> <p>Signalling Liverpool Street IECC Electrification AC: Romford</p> <p>Platforms 1 & 4 Are to be used by class 9 international services only. Class 1, 2 & 5 domestic services may be routed through these platforms (see Module C of this Sectional Appendix).</p> <p>Platforms 2 & 3 Are to be used by classes 1, 2 & 5 domestic services only. Class 9 international services may be routed through these platforms (see Module C of this Sectional Appendix).</p> <p>Class 4 & 6 freight trains are prohibited from passing through these platforms.</p> <p>Temple Mills Link Line Locations and kilometrages shown () are on the Temple Mills Link Line.</p> <p>Trains conveying passengers are prohibited from entering Temple Mills International Depot. (this does not include EUKL staff travelling as pass)</p> <p>Temple Mills International Depot is controlled by the EUKL Operations Controller - See EUKL International Rule Book, Section 6.</p> <p>① Hidden Marker AF718 - refer to Module D of this Sectional Appendix.</p> <p>1 Up CTRL (line parity 1) 2 Down CTRL (line parity 2) 3 Up International (line parity 1) 4 Up RDO (line parity 1) 5 Temple Mills Link Line (line parity 2) 6 Down RDO (line parity 2) 7 Down International (line parity 2) 8 Down Temple Mills Line 9 Up Temple Mills Line</p>
		Platform 1 & 4 limits	9 426		
		STRATFORD INTERNATIONAL (Not open to public)	9 631		
		Platform 2 & 3 limits	9 671		
		(Temple Mills Tunnel Portal)	9 834		
		Platform 1 & 4 limits	9 836		
		(TEMPLE MILLS TUNNEL) (300m)			
		Stratford International East Jn	10 130		
		(Temple Mills Tunnel Portal)	(10 134)		
		(Hidden marker AF718) ①	(10 155)*		
		[CAB] board	(10 311)		
		(Signal TMS)	(10 551)*		

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LOR	Seq.	Line of Route Description	ELR	Route	Last Updated
SO400	006	St Pancras International to Eurotunnel Interface	TRL2 TRL4	CTRL	06/12/08
Location	Km	Running lines		Remarks	
Stratford Portal	10 150			CTRL TVM430 cab signalling Asford AFC Electrification AC: Asford AFC	
Woodgrange Road Emergency Response Location (ERL)	11 451 11 790			CSR 92	
Woodgrange Road Intervention Shaft	11 897			Tilbury Lines Signalling Upminster IECC Electrification AC: Romford	
Barrington Road Emergency Response Location (ERL)	14 361 14 764			CSR 03	
Barrington Road Intervention Shaft	14 827			Locations and kilometerages shown () are on the Ripple Lane Chords. Trains conveying passengers are prohibited from entering Ripple Lane Exchange Sidings except in emergencies. Up & Down Ripple Lane chords not in regular use. Instructions shown in Module D of this Sectional Appendix to be applied. Ripple Lane Exchange Sidings and FMC connecting line are controlled by Upminster IECC. Electrification (AC) is controlled by Romford ECO.	
LONDON TUNNEL 2 (10120m)		Ripple Lane Exchange Sidings For continuation see EA1390 Seq 2		① Hidden Markers AF095/AF101 - refer to Module D of this Sectional Appendix.	
Wayside Intervention Shaft	17 769				
Wayside Emergency Response Location (ERL)	17 875 18 250				
(Signal UR834 + [CAB] - Down chord)	(20 071)				
Ripple Lane Portal Intervention Shaft	20 081				
([CAB] board - Down chord)	(20 200)*				
Dagenham Signalling Room (SR13)	20 200				
(Signal UR832 + [CAB] - Up chord)	(20 253)				
Ripple Lane Portal (OHNS - Down chord)	20 270 (20 300)*				
([CAB] board - Up chord)	(20 394)*				
(Hidden Marker AF095 - Down chord) ①	20 482				
(OHNS - Up chord)	(20 744)*				
Dagenham Junction - Down line	20 829				
(Hidden Marker AF101 - Up chord) ①	21 186				
Dagenham Junction - Up line	21 699				
		For continuation see EA1390 Seq 2		1 Up CTRL (line parity 1) 2 Down CTRL (line parity 2) 3 Up Tilbury Main 4 Down Tilbury Main 5 FMC connecting line	

LOR	Seq.	Line of Route Description	ELR	Route	Last Updated
SO400	007	St Pancras International to Eurotunnel Interface	TRL3	CTRL	06/12/08
Location	Km	Running lines		Remarks	
		1	2	3	4
London End	23 541	230	230		
RAINHAM CREEK Viaduct (529m)					
Brussels End	24 070				
Wennington Crossovers	25 585 25 858				
Wennington Signalling Room (SR14)	25 940				
	26 021 26 294				
London End	27 215				
AVELEY Viaduct (679m)					
Brussels End	27 894				
VHME - Down CTRL VHME - Up CTRL	29 723 29 739				
		3	4		

CTRL	CSR
TVM430 cab signalling Electrification	Ashford AFC AC: Ashford AFC
Tilbury Lines Signalling Electrification	Upminster IECC AC: Romford

1 Up CTRL (line parity 1)
2 Up CTRL (line parity 2)
3 Up Tilbury Main
4 Down Tilbury Main

LOR	Seq.	Line of Route Description	ELR	Route	Last Updated
SO400	008	St Pancras International to Eurotunnel Interface	TRL3	CTRL	06/12/08
Location	Km	Running lines		Remarks	
London End	30 550	<p>For continuation see EA1390 Seq 4</p>		CTRL TVM430 cab signalling Ashford AFC Electrification AC: Ashford AFC	
THURROCK Viaduct (1024m)				Tilbury Lines Signalling Upminster IECC Electrification AC: Romford	
Brussels End	31 574			CSR 	
Essex Portal	32 060				
Essex Portal Intervention Shaft	32 272				
THAMES Tunnel (3115m)					
Kent Portal (Intervention location)	35 175				
				1 Up CTRL (line parity 1) 2 Down CTRL (line parity 2) 3 Up Tilbury Main 4 Down Tilbury Main 5 Up International (line parity 1) 6 Up RDO (line parity 1) 7 Down International (line parity 2)	

LOR	Seq.	Line of Route Description	ELR	Route	Last Updated
SO400	009	St Pancras International to Eurotunnel Interface	TRL3?	CTRL	06/12/08
Location	Km	Running lines		Remarks	
North Kent Line Connection Jn	35 555 35 762 *			CTRL & North Kent Line Connection TVM430 cab signalling Ashford AFC Electrification AC: Ashford AFC CSR 92	
Ebbsfleet Signalling Room (SR15)	(35 996) * 36 160			North Kent Line Signalling Ashford IECC (NK) Electrification DC: Lewisham Kilometrages shown () are on the North Kent Line Connection.	
Platforms 1 & 4 limits	36 229 * (36 249) *			Platforms 1 & 4 Are to be used by class 9 international services only. Class 1, 2 & 5 domestic services may be routed through these platforms (see Module C of this Sectional Appendix).	
Platforms 2 & 3 limits	36 348 36 479			Platforms 2 & 3 Are to be used by classes 1, 2 & 5 domestic services only. Not open to public. Class 9 International services may be routed through these platforms (see Module C of this Sectional Appendix).	
EBBSFLEET INTERNATIONAL (LOW LEVEL)	36 550			1 Up CTRL (line parity 1) 2 Down CTRL (line parity 2) 3 Up International (line parity 1) 4 Up RDO (line parity 1) 5 Down International (line parity 2) 6 Down North Kent Line Connection (line parity 2) 7 Up North Kent Line Connection (line parity 1) 8 Down RDO (line parity 2) 9 Down North Kent Main 10 Up North Kent Main	
Platforms 1 - 4 limits	37 757				

LOR	Seq.	Line of Route Description	ELR		Route	Last Updated							
SO400	010	St Pancras International to Eurotunnel Interface	TRL3	TRL5	CTRL	06/12/08							
Location	Km	Running lines			Remarks								
	36 832 *	1 230	3 170	4 130	6 130	5 170	2 230	7 100	8 100	10	9	CTRL TVM430 cab signalling Ashford AFC Electrification AC: Ashford AFC	CSR 92
North Kent Line Connection shown in ()	(36 300)										North Kent Line Connection Colour light signalling Ashford AFC Electrification AC: Ashford AFC DC: Lewisham		CSR 92
(Platforms 5 & 6 limits) (Signals AF150 / AF152 + CAB) (Limit of DC conductor rail)	(36 348)										North Kent Line Signalling Ashford IECC (NK) Electrification DC: Lewisham		
(EBBSFLEET INTERNATIONAL) (HIGH LEVEL) (Not open to public) (Platforms 5 & 6 limits)	(36 741)										North Kent Line Connections bi-directional from junction with CTRL as far as connection to Church Path Pit Sidings.		
(Signal AF182)	(36 995)										Electrified (AC) from junction with CTRL as far as Springhead Road Jn (exclusive).		
(Up line Viaduct (113m))	(37 108) (37 221)										Electrified (DC) from Springhead Road Jn to St Pancras end of platforms 5 & 6.		
(Limits of AC OHLE - Up line)	(37 229)										Permissive working authorised in platforms 5 & 6 for attaching/detaching purposes only.		
(Springhead Road Jn - Up line)	(37 373)										North Kent Line connections not in regular use. Instructions shown in Module D of this Sectional Appendix to be applied.		
(Limit of AC OHLE - Down line + signal NK477)	(37 398)												
(Springhead Road Jn - Down line)	(37 581)												
Portal	38 235												
PEPPER HILL TUNNEL (515m)													
Portal	38 750												
		1 230	2 230									1 Up CTRL (line parity 1) 2 Down CTRL (line parity 2) 3 Up International (line parity 1) 4 Up RDO (line parity 1) 5 Down International (line parity 2) 6 Down RDO (line parity 2) 7 Up North Kent Line connection 8 Down North Kent Line connection 9 Down North Kent Main 10 Up North Kent Main	

LOR	Seq.	Line of Route Description	ELR	Route	Last Updated	
SO400	011	St Pancras International to Eurotunnel Interface	TRL3 FJS1	CTRL	06/12/08	
		Location	Km	Running lines	Remarks	
		Waterloo Connections shown in () (Fawkham Jn)	(200 091)		CTRL TVM430 cab signalling Ashford AFC Electrification AC: Ashford AFC	CSR
		(Up line)	(200 761)*		Waterloo Connections	CSR
		(Down line)	(201 024)*		Down Waterloo Connection (line parity 2)	TVM430 cab signalling Ashford AFC Electrification AC: Ashford AFC DC: Paddock Wood
		(Limit of AC OHLE)	(201 308)		SOUTHFLEET TUNNEL (85m) 39.150 - 39.235	Chatham Lines Signalling Victoria ASC (VS) Electrification DC: Paddock Wood
		(Signal AF185 + CAB) - Down line	(202 170)		Up Waterloo Connection (line parity 1)	The Waterloo Connections are NOT bi-directional. Electrified (AC) from Southfleet Jn as far as KP 201.308 - Both lines. Electrified (DC) from Fawkham Jn to KP 202.170 - Both lines.
		(Limit of DC conductor rail - both lines)	(202 598)			
		(Signal VS286 + CAB) - Up line	(203 817)*			
			(204 446)*			
		Up & Down CTRL	39 900 *			
		Southfleet Jn	40 150			
			(206 012)			
		Southfleet Crossover	40 552			
			40 839			
		WROTHAM ROAD Viaduct (83m)	40 944			
		Loop points - both lines	41 027			
			41 169			
		EXAM board - Up Loop ①	41 684			
		SINGLEWELL LOOPS				
		Loop points - Up CTRL	42 690			
		Loop point - Down CTRL	42 783			
				Country End Siding Singlewell Maintenance Depot (Not electrified)	① Refer to Module C of this Sectional Appendix 1 Up CTRL (line parity 1) 2 Down CTRL (line parity 2) 3 Up Chatham Main 4 Down Chatham Main	

LOR	Seq.	Line of Route Description	ELR	Route	Last Updated
SO400	012	St Pancras International to Eurotunnel Interface	TRL3	CTRL	06/12/08
		Location	Km	Running lines	Remarks
		Singlewell Crossover Singlewell Signalling Room (SR21)	42 594 43 008 43 081		CTRL TVM430 cab signalling Ashford AFC Electrification AC: Ashford AFC
		OHNS - both lines	43 320		Chatham Lines Signalling Rochester SB Electrification DC: Paddock Wood
		Portal HALFPENCE LANE TUNNEL (170m)	45 015		Medway Valley Lines Signalling Cuxton SB Electrification DC: Paddock Wood
		Portal	45 185		
		London end	49 967		
		Medway Viaduct (1261m)			
		Brussels end	51 228		
		Nashenden Crossovers	52 230 52 517 52 617		
		VHME - Down CTRL	52 864 52 904		
		Nashenden Signalling Room (SR22) VHME - Up CTRL	52 930 52 995		
				1 Up CTRL (line parity 1) 2 Down CTRL (line parity 2) 3 Down Chatham Main 4 Up Chatham Main 5 Up Medway Valley 6 Down Medway Valley	

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LOR	Seq.	Line of Route Description	ELR	Route	Last Updated
SO400	013	St Pancras International to Eurotunnel Interface	TRL3	CTRL	06/12/08
Location	Km	Running lines		Remarks	
		1	2		
Portal	54 437	▲ 300 ▼ 270	▲ 270 ▼ 300	TVM430 cab signalling Ashford AFC Electrification AC: Ashford AFC.	
NORTH DOWNS TUNNEL (3199m)		-----		CSR 91	
Portal	57 636	-----			
Portal	60 130	-----			
BOXLEY TUNNEL (325m)		-----			
Portal	60 455	-----			
OHNS - both lines	63 700	▲ 300 ▼ 270	▲ 270 ▼ 300	1 Up CTRL (line parity 1) 2 Down CTRL (line parity 2)	

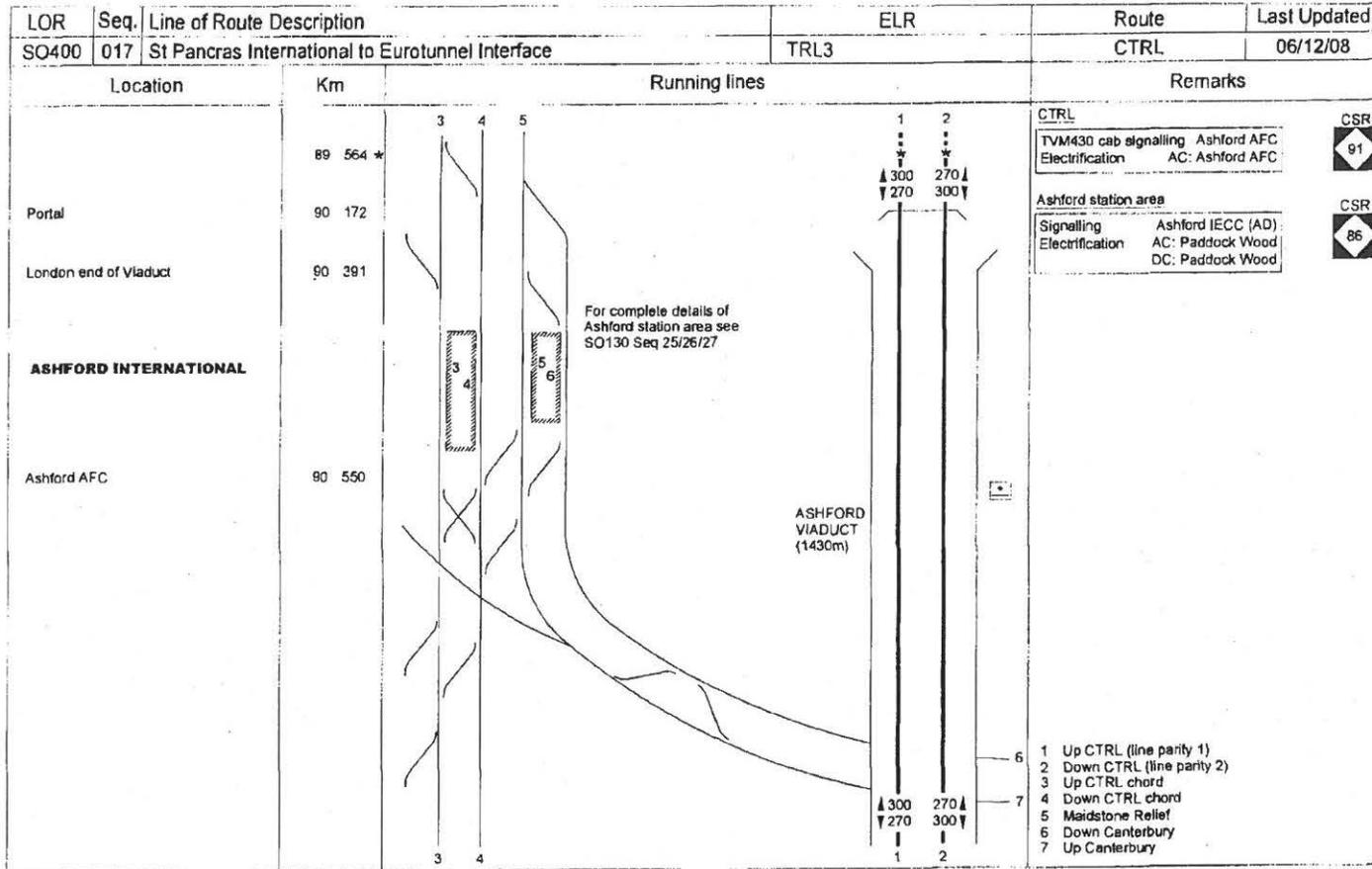
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LOR	Seq.	Line of Route Description	ELR	Route	Last Updated
SO400	014	St Pancras International to Eurotunnel Interface	TRL3	CTRL	06/12/08
Location	Km	Running lines		Remarks	
Crismill Crossovers	65 600 65 887	For continuation see SO140 Seq 006		CTRL TVM430 cab signalling Ashford AFC Electrification AC: Ashford AFC	
Crismill Signalling Room (SR23)	66 569 66 595 66 855			CSR 	
Portal EYHORNE TUNNEL (360m)	67 618			Maldstone Line Signalling Maidstone East SB Electrification DC: Paddock Wood	
Portal	67 978				
Portal HARRIETSHAM TUNNEL (150m)	71 218				
Portal	71 368				

LOR	Seq.	Line of Route Description	ELR	Route	Last Updated
SO400	015	St Pancras International to Eurotunnel Interface	TRL3	CTRL	06/12/08
Location	Km	Running lines	Remarks		
Portal SANDWAY TUNNEL (170m)	74 176		TVM430 cab signalling Ashford AFC Electrification AC: Ashford AFC		
Portal	74 346		<div style="text-align: right;"> CSR 91 </div>		
Lenham Crossover	75 592 75 878				
Loop points - both lines	77 080		London End Siding Up Loop 130 Down Loop 130 Country End Siding		
Lenham Signalling Room (SR24)	77 260				
LENHAM LOOPS					
Loop points - Up CTRL	79 380				
Loop points - Down CTRL	79 473				
Charing Crossover	79 484				
VHME - Up CTRL	79 731				
79 759					
VHME - Down CTRL	79 822				
			1 Up CTRL (line parity 1) 2 Down CTRL (line parity 2)		

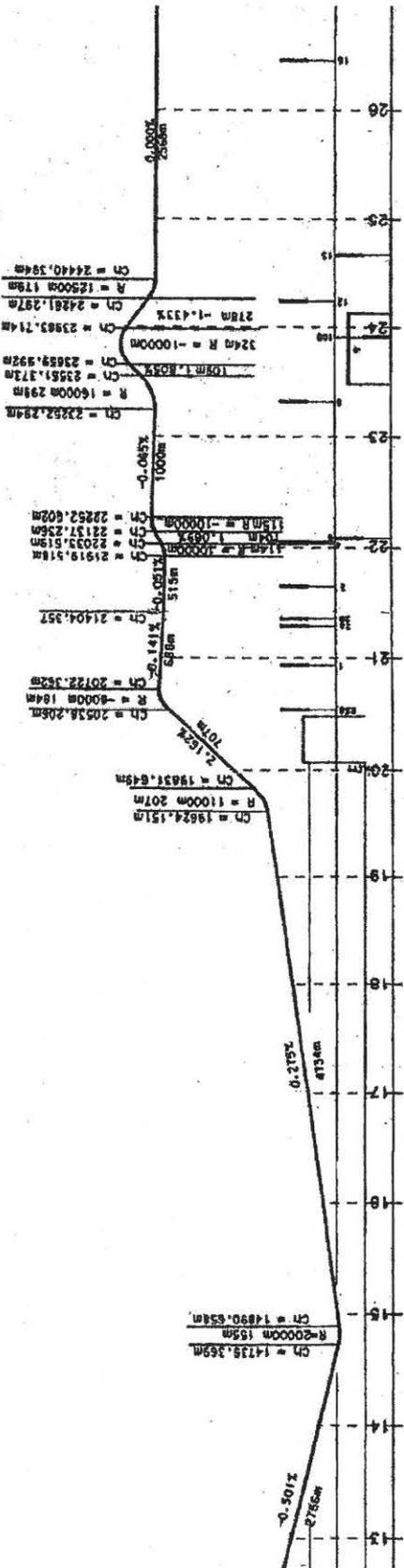
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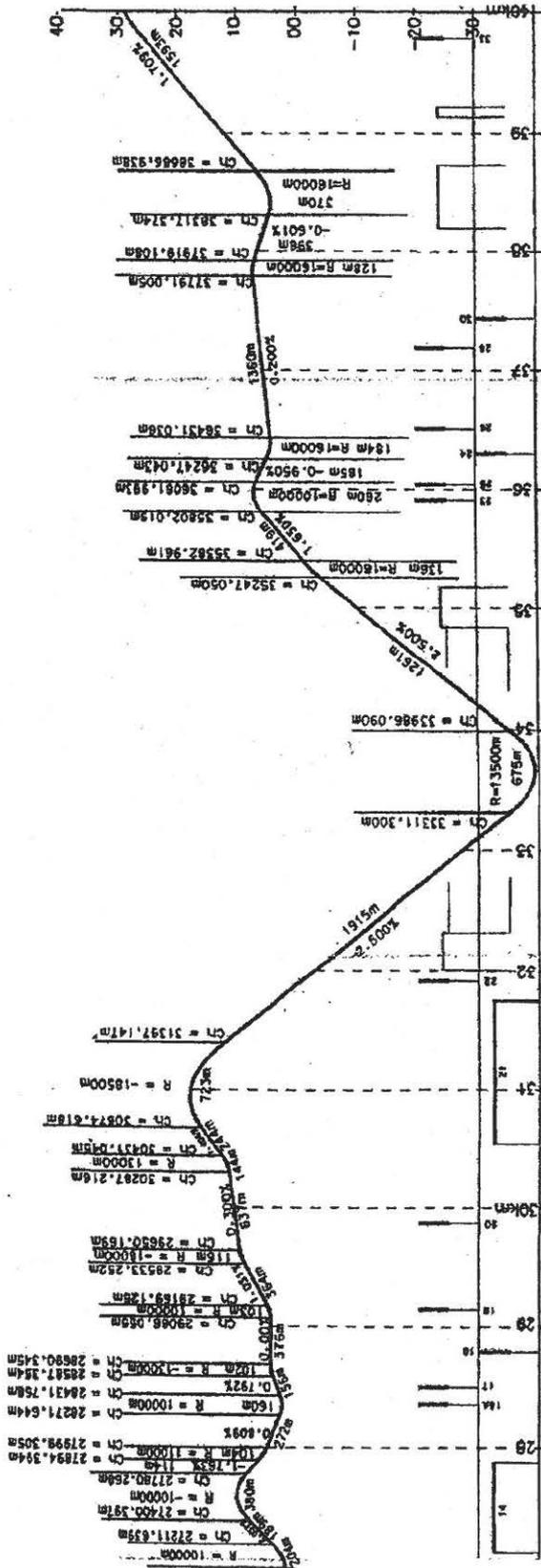
LOR	Seq.	Line of Route Description	ELR	Route	Last Updated	
SO400	016	SI Pancras International to Eurotunnel interface	TRL3	CTRL	06/12/08	
Location	Km	Running lines		Remarks		
Portal	80 064 *	<p>The diagram shows a cross-section of the railway lines. At the top, two vertical dashed lines represent the CTRL lines, labeled 1 and 2, with a 270m spacing. Below these are the Ashford West chords, labeled 3 and 4, with a 160m spacing. The Ashford Cut and Cover Tunnel is shown as a large rectangular structure with two tracks, labeled 5 and 6, with a 270m spacing. At the bottom, there are two sets of signals and speed limits: one set for the CTRL lines (100/60 mph) and one set for the Ashford West chords (130/80 mph). The diagram also shows various other lines and structures, including the Tull Hill Viaduct and the Maldstone Lines.</p>		CTRL & Ashford West chords	CSR	
WESTWELL LEACON - LANE TUNNEL (120m)	82 440			TVM430 cab signalling Ashford AFC	AC: Ashford AFC	91
Portal	82 560			Maldstone Lines		CSR
Tull Hill Viaduct (127m)	83 732			Signalling Ashford IECC (AD)		86
	83 859			Electrification DC: Paddock Wood		
Ashford West Signalling Room (SR25)	88 225					
Ashford West Junction	88 311					
Portal - Up & Down CTRL	88 610					
Ashford West chords shown in () (Portals)	(88 684)					
(Portals)	(89 150)					
(Signal AF312 + CAB - Up chord)	(89 269)					
(Signal AF318 + CAB - Down chord)	(89 322)					
(CAB) boards - Both chords	(89 365) *					
(Signals AD947/AD949)	(89 635)					
				<ul style="list-style-type: none"> 1 Up CTRL (line parity 1) 2 Down CTRL (line parity 2) 3 Up Ashford West chord (line parity 1) 4 Down Ashford West chord (line parity 2) 5 Up Maldstone 6 Down Maldstone 7 Maldstone Relief 		

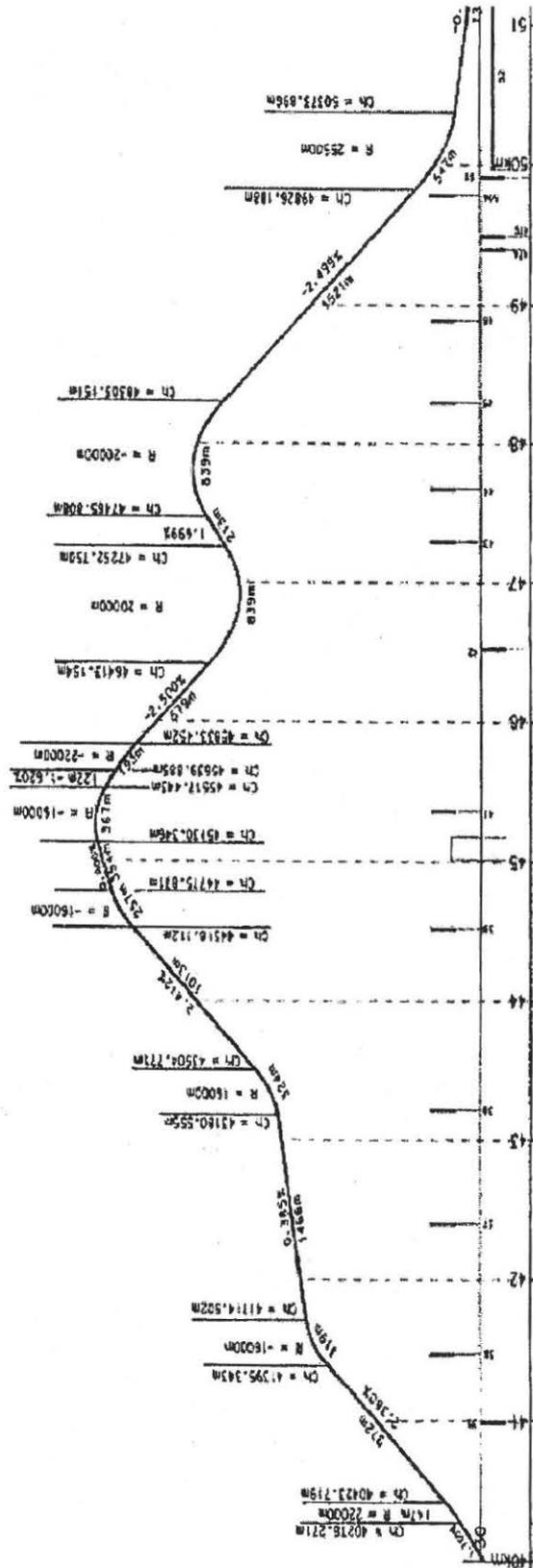


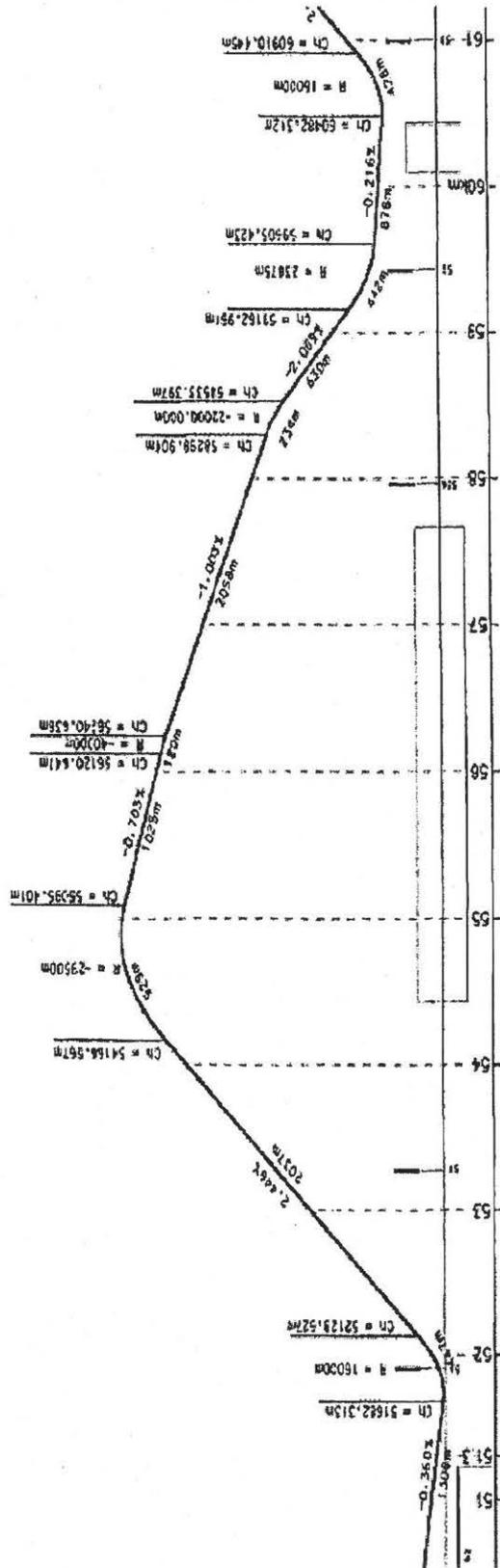
LOR	Seq.	Line of Route Description	ELR	Route	Last Updated
SO400	019	St Pancras International to Eurotunnel Interface	TRL3	CTRL	06/12/08
Location	Km	Running lines	Remarks		
Westenhanger Signalling Room (SR27)	103 280 103 415 103 557		CTRL & Dollands Moor Freight chord TVM430 cab signalling Ashford AFC Electrification AC: Ashford AFC CSR 91		
Westenhanger Crossovers	103 667 103 954		South Eastern Main Lines and Dollands Moor Yard area Signalling Ashford IECC (AD) Electrification AC: Paddock Wood DC: Paddock Wood CSR 87		
SANDLING TUNNEL	104 526 104 618 104 637 *		Trains conveying passengers are prohibited from entering Dollands Moor yard, except in an emergency.		
Dollands Moor West Junction - Up line	105 557		Locations and kilometerages shown () are on the Dollands Moor Freight chord.		
- Down line	105 674				
- chord	105 892				
(Hidden Marker AF342)	(106 075)		① Hidden Marker AF342 - refer to Module D of this Sectional Appendix.		
([CAB] board)	(106 410)				
(Signal AD759 + [CAB])	(106 829)				
London end of viaduct	106 914				
(OHNS)	(106 955)				
Grange Alders Viaduct (Up CTRL) (526m)					
Brussels end of viaduct	107 373 * 107 440		1 Up CTRL (line parity 1) 2 Down CTRL (line parity 2) 3 Up Main 4 Down Main 5 Through Passenger Loop 6 Up Dover 7 Down Dover		

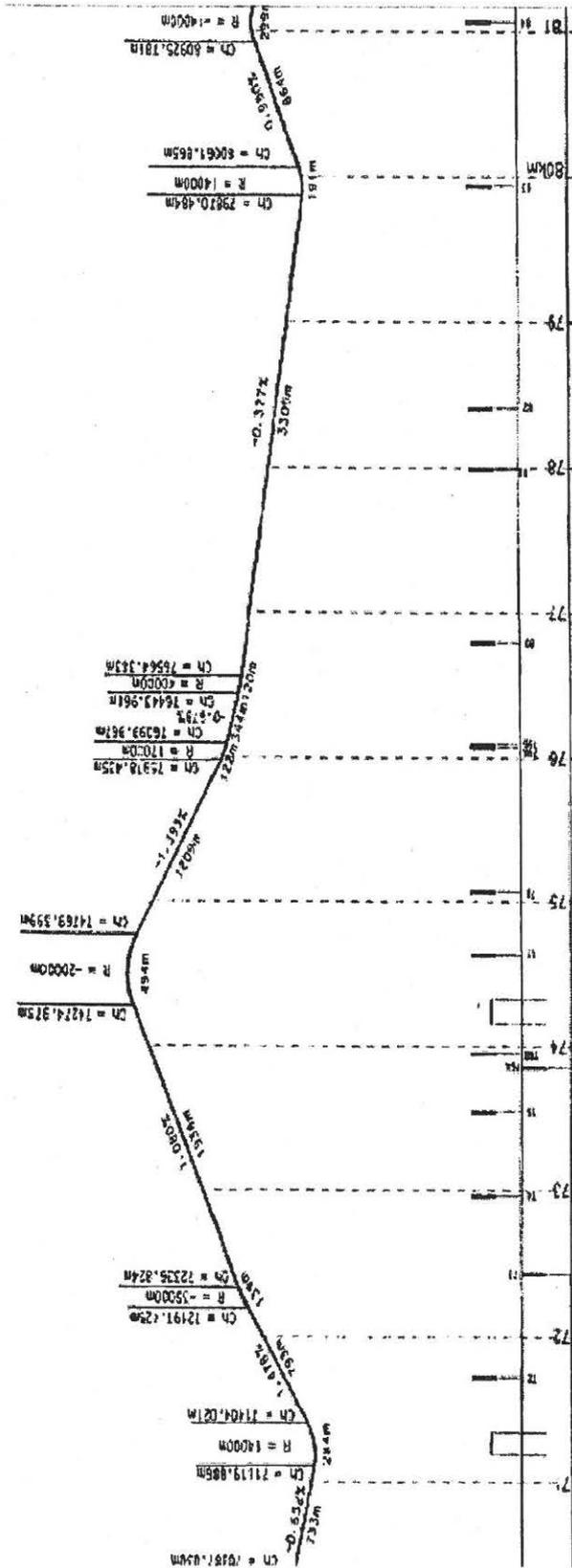
LOR	Seq.	Line of Route Description	ELR	Route	Last Updated	
SO400	020	SI Pancras International to Eurotunnel Interface	TRL3	CTRL	06/12/08	
		Location	Km	Running lines	Remarks	
		OHNS Down CTRL	108 166 * 108 300		<p>CTRL</p> <p>TVM430 cab signalling Ashford AFC Electrification AC: Ashford AFC</p> <p>Dollands Moor Yard area</p> <p>Signalling Ashford IECC (AD) Electrification AC: Paddock Wood DC: Paddock Wood</p> <p>Conductor rail on Down from Dollands Moor Yard to connection with Down CTRL (exclusive).</p>	<p>CSR 91</p> <p>CSR 87</p>
		Change of kilometrage	108 582 (CTRL) 7 000 (ET) 7 050 * (Up CTRL)	<p>M20/A20 viaducts on Up CTRL/Up Slow/Down Fast (296m)</p> <p>M20/A20 viaducts on Down CTRL (321m)</p>	<p>① Change of line designation.</p> <p>② Hidden Markers AF363 / AF365 - refer to Module D of this Sectional Appendix.</p>	
		Signals AD830/AD832 + CAB - Up Slow / Down Fast	7 198 *			
		Cheriton Signalling Room (SR28)	7 281			
		OHNS Up CTRL	7 329			
		CAB boards - Up Slow / Down Fast	7 440			
		Hidden Markers AF363/AF365 ② Up Slow/Down Fast	7 753			
		Limit of conductor rail on Down Fast Junction Up Fast / Up CTRL	7 969			
		Junction Down CTRL / Down Fast	8 203			
		CTRL / Eurotunnel Boundary (Up & Down Fast)	8 366 *			
				<p>Eurotunnel</p> <p>TVM430 cab signalling Eurotunnel RCC Electrification AC: Eurotunnel RCC</p> <p>1 Up CTRL (line party 1) 2 Down CTRL (line party 2) 3 Up Main 4 Down Main 5 Through Passenger Loop 6 Up Fast 7 Up Slow 8 Down Fast</p>	<p>CSR 12</p>	

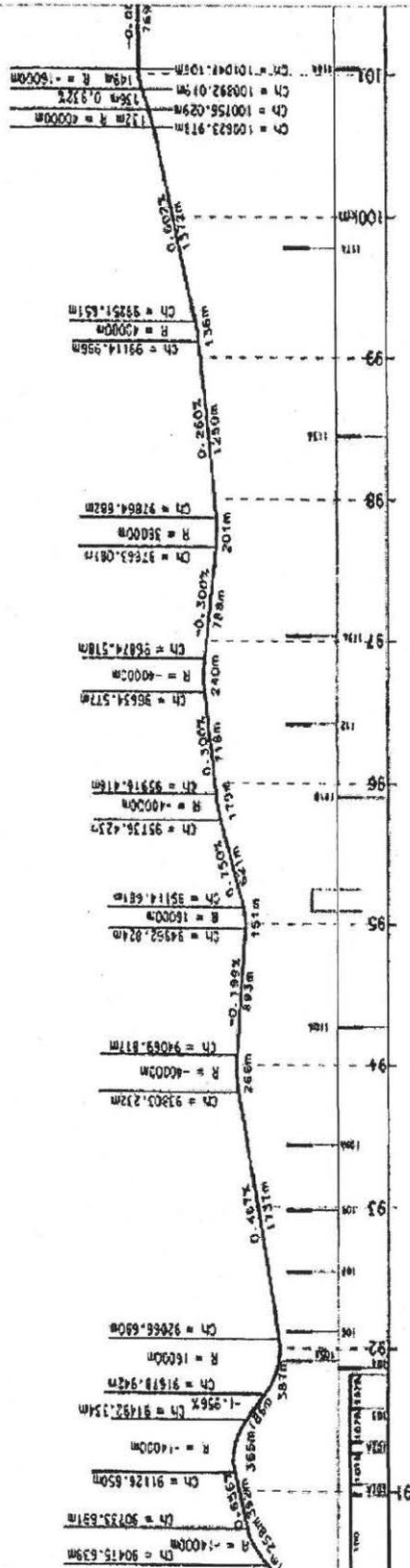


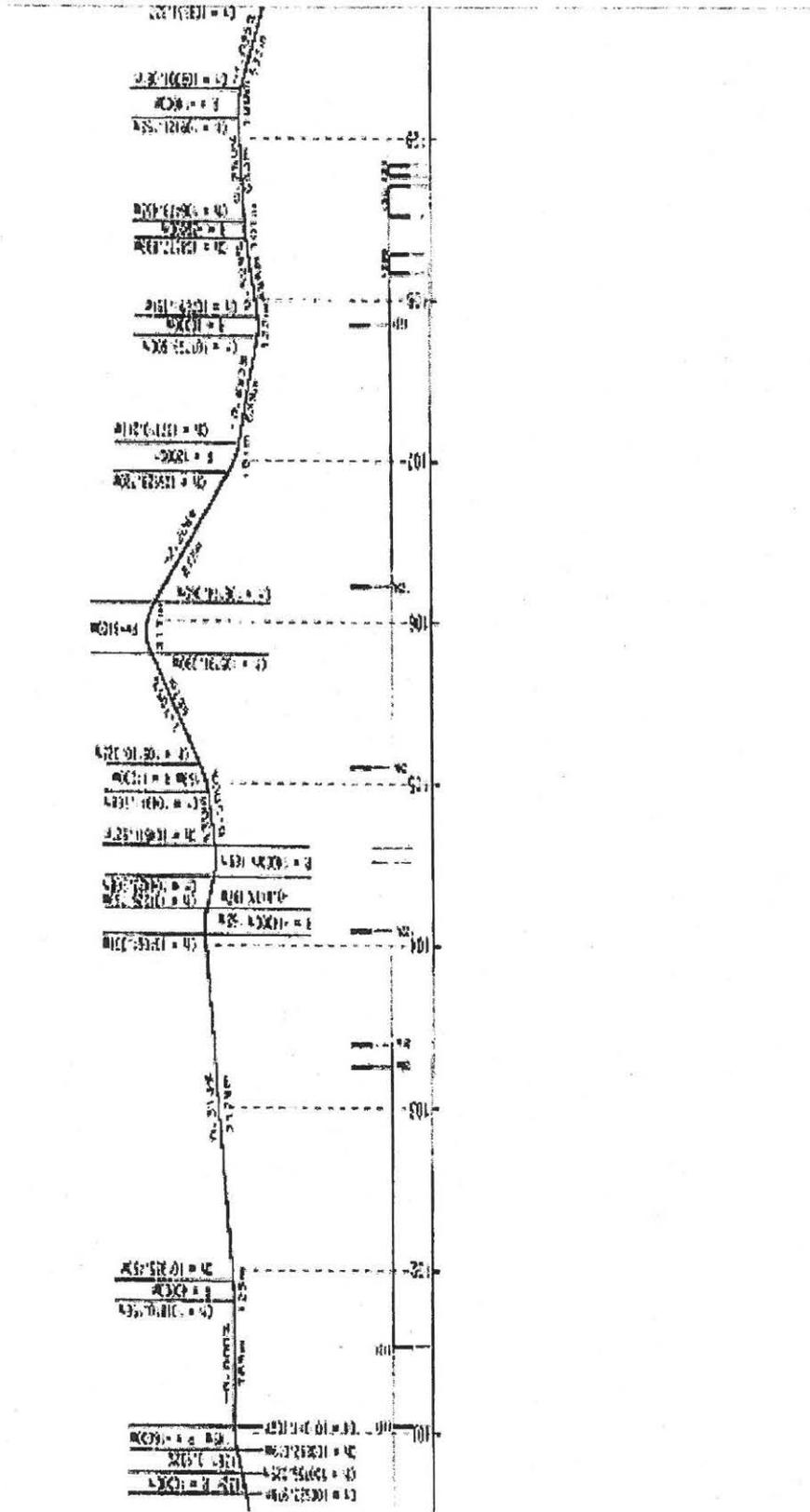












Schedule 4
Charging Framework

Schedule 4

Charging Framework

Section 1

Access Charges

1. Definitions

1.1 In this Section 1, unless the context otherwise requires:

"Long-Term Construction Costs" means the costs relating to the initial construction of HS1 after deducting therefrom any investment recovery charge aspects of the track access charges paid by train operators prior to the Charging Framework coming into effect; and

"OMR Costs" means the costs relating to the operation, maintenance and renewal of HS1, including stations, over the life of the HS1 Concession, which costs include long-term costs of the operational phase of the project incurred in order to meet the performance standards, asset condition and handback condition of HS1 required by this Agreement.

2. Introduction

2.1 Any charges levied by HS1 Co on train operators for track access to HS1 and for such other services as are referred to in Schedule 2 of the Railways Regulations, including station access, shall be determined by HS1 Co pursuant to this regime and to the Railways Regulations and in particular the provisions of Schedule 3 of those Regulations.

2.2 HS1 Co shall ensure that any track access or station access agreement entered into with a train operator relating to access to HS1 contains provisions to give effect to the principles set out in the Railways Regulations to which each of HS1 Co and the other parties to such agreements shall be contractually bound.

2.3 The Secretary of State and HS1 Co acknowledge that this regime is intended to operate in a manner consistent with the Railways Regulations.

3. Access charges

3.1 Access charges may include:

3.1.1 an investment recovery charge pursuant to paragraph 3 of Schedule 3 of the Railways Regulations and in accordance with paragraphs 4.1, 4.2 and 4.3 of this Section 1;

3.1.2 an additional investment recovery charge pursuant to paragraph 3 of Schedule 3 of the Railways Regulations and in accordance with paragraph 4.4 of this Section 1; and

3.1.3 charges relating to OMR Costs on the basis of long-term project costs pursuant to paragraph 3 of Schedule 3 of the Railways Regulations and in accordance with paragraph 4.5 of this Section 1.

3.2 HS1 Co may subject to the terms of the HS1 Concession apply discounts in accordance with paragraph 6 of Schedule 3 of the Railways Regulations.

3.3 HS1 Co may when determining any charges pursuant to paragraph 2.1 of this Section 1 levy mark-ups and the Secretary of State hereby approves the levying of such mark ups provided that HS1 Co levies them in accordance with the requirements of Schedule 3 of the Railways Regulations.

4. Long-term Project Costs

- 4.1 Subject to paragraphs 4.2 and 4.3 of this Section 1, the Long-Term Construction Costs shall be the costs taken into account in calculating any investment recovery charge of the type permitted in paragraph 3.1.1 of this Section 1.
- 4.2 Any investment recovery charge of the type permitted under paragraph 3.1.1 of this Section 1 shall be no more than £69.57 (plus any applicable value added tax) per minute per train service. In the case of trains scheduled to stop at any one or more of Stratford Station, Ebbsfleet Station and Ashford International Station the number of scheduled minutes for which any investment recovery charge of the type permitted under paragraph 3.1.1 or 3.1.2 of this Section 1 shall be levied will be reduced by the additional time taken to enable trains to stop at such stations.
- 4.3 The sum specified in paragraph 4.2 of this Section 1 shall be adjusted semi-annually in accordance with the provisions of Section 2.
- 4.4 It is recognised that, over the life of this Agreement and subject to the terms of this Agreement, further investment in relation to HS1 or any related facilities may be approved or required. In the event of such further investment, HS1 Co shall, subject to the terms of this Agreement and the Railways Regulations, also be entitled to take into account the long-term costs associated with that additional investment in calculating any investment recovery charge of the type permitted in paragraph 3.1.2 of this Section 1.
- 4.5 Any charge for long-term project costs of the type permitted under paragraph 3.1.3 shall be subject to the terms of this Agreement and the Railways Regulations.

5. Compliance with Railways Regulations

- 5.1 HS1 Co shall comply with the Railways Regulations. In particular, HS1 Co shall:
- 5.1.1 comply with Regulation 9 of the Railways Regulations;
 - 5.1.2 comply with Regulation 14(6) of the Railways Regulations;
 - 5.1.3 prepare and maintain such accounts and estimates as are necessary to calculate and justify the amounts mentioned in Regulation 15(1) and paragraph 3 of Schedule 3 of the Railways Regulations, such accounts and estimates to be subject to such more specific requirements as the Secretary of State may reasonably require or agree; and
 - 5.1.4 send copies of the accounts required under paragraph 5.1.1 to the Secretary of State at such times and for such periods as the Secretary of State shall, acting reasonably, require and allow such inspection and auditing of such accounts as the Secretary of State shall require.

Section 2

Indexation

1. Definitions

1.1 Words and expressions defined in Section 1 shall, unless the context otherwise requires, have the same meaning in this Section 2.

1.2 In this Section 2, unless the context otherwise requires:

"Indexation Base Month" means the month in which this Agreement is entered into;

"Indexable Element" or **"IE"** means the sum specified in paragraph 4.2 of Section 1;

"Indexation Formula" means $IE_m = (IE_{m-1} \times b/a)$ where:

"IE_{m-1}" means the Indexable Element applicable immediately before the relevant Indexation Review Date; and

"a" means the value of RPI for the Index Observation Month that is 6 months prior to that used in the calculation of "b" (save in the case of the first Indexation Review Date when it shall be the value of RPI for the Index Observation Month immediately preceding the Indexation Base Month); and

"b" means the value of RPI for the Index Observation Month immediately preceding the relevant Indexation Review Date;

"Index Observation Months" shall be February and August each year;

"Indexation Review Date" shall be the date six months (6) immediately following the Indexation Base Month, and every six months (6) thereafter; and

"RPI" means the UK All Items Retail Prices Index as published by the United Kingdom Office for National Statistics (January 1987 = 100) contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefor) or failing such publication, such other index which replicates RPI as closely as possible (with the intention of putting HS1 Co in no better nor worse position than it would have been had the index not ceased to be published).

2. Indexation

2.1 On each Indexation Review Date, the Indexable Element shall be adjusted by applying to it the Indexation Formula, the first such Indexable Element being IE₀.

2.2 On each occasion that the Indexable Element is to be adjusted in accordance with this paragraph, the Indexation Formula shall be applied to the Indexable Element applicable immediately before the relevant Indexation Review Date.

Schedule 5

Insurances

These insurances are to be taken out and maintained or procured by HS1 Co. HS1 Co shall ensure that the Secretary of State and his employees and agents are included as additional named insureds but not as loss payees in each of the policies specified at [1, 2 and 4] of this Schedule.

Insurance	Principal Cover	Minimum Sum Insured	Maximum Deductible (see Note 1)	Principal Extensions (see Note 2)	Principal Exclusions
1. Material Damage and Business Interruption	<p>(a) All risks of accidental loss, destruction or damage to any real and personal property including track and any locomotive or rolling stock of any description</p> <p>(b) Business Interruption following loss or damage to any of the property insured. 36 months period of indemnity in respect of St Pancras International. 24 months period of indemnity all other locations</p>	[£350,000,000] in Month ^{11 2008} Prices in respect of any one occurrence	[£10,000,000] in Month ^{11 2008} Prices any one claim	<ul style="list-style-type: none"> • Reinstatement/ replacement of infrastructure items, buildings, plant and machinery except motor vehicles and personal effects • Terrorism • Additional metered water and gas charges incurred as a result of damage • Exhibition property at trade fairs and exhibitions • Additional costs of complying with public authority requirements • Theft damage to buildings • Restriction of access 	<p>Damage or consequential loss resulting or caused by:</p> <ul style="list-style-type: none"> • Asbestos removal • Boiler explosion • Changes in environment; corrosion, rust, wet or dry shrinkage, vermin and insects • Deliberate act of a supply undertaking withholding or restricting the supply of gas, water, electricity or telecommunications services • Electronic data and failure of a system including computer virus

Insurance	Principal Cover	Minimum Sum Insured	Maximum Deductible (see Note 1)	Principal Extensions (see Note 2)	Principal Exclusions
				including the Channel Tunnel and Network Rail <ul style="list-style-type: none"> • Utilities in respect of electricity, gas, water and telecommunication services • Goods in transit • Inadvertent errors and omissions • Machinery breakdown 	<ul style="list-style-type: none"> • Gradual deterioration, wear and tear, inherent vice, latent defect, faulty or defective workmanship and operational error by the insured • Pollution and contamination • Moveable property in the open except rolling stock • Settlement and bedding down of new structures Excluded Property: <ul style="list-style-type: none"> • Jewellery, valuables and explosives • Overhead transmission and distribution lines other than those declared in the sums insured • Property in the course of construction • Vehicles licensed for

Insurance	Principal Cover	Minimum Sum Insured	Maximum Deductible (see Note 1)	Principal Extensions (see Note 2)	Principal Exclusions
					road use
2. Public and Products Liability	<p>Indemnity to the insured for all sums which the insured shall become legally liable to pay in respect of:</p> <p>(a) Death or injury to any person including disease, illness and mental anguish, libel, slander and defamation</p> <p>(b) Loss or damage to property including nuisance, trespass, obstruction and loss of amenities</p>	<p>£155,000,000 any one claim unlimited during any one period of insurance. Policy limit to be aggregated in any one period of insurance in respect of liability arising from products liability, pollution and contamination, such aggregates to apply separately.</p>	<p>£5,000,000 any one claim</p>	<ul style="list-style-type: none"> • World-wide geographical limits • The insured and Insurer may cancel the policy with no less than 90 days notice • The insurance shall not be invalidated by any act or omission unknown to or beyond the control of the insured • Indemnity to other persons to the extent required by contract • Automatic waiver of subrogation against any party to the extent required by contract • Indemnity to the insured in respect of legal costs and expenses incurred in defending allegations 	<ul style="list-style-type: none"> • Injury sustained by an employee during the course of his employment • Property damage to property in the Insured's custody and control other than: <ul style="list-style-type: none"> • Personal effects of members or visitors • Premises tenanted by the insured • Any train or rolling stock belonging to a third party whilst being recovered, assisted, towed or pushed by the insured • Death, injury or property damage deliberately caused

Insurance	Principal Cover	Minimum Sum Insured	Maximum Deductible (see Note 1)	Principal Extensions (see Note 2)	Principal Exclusions
				<p>or proceedings brought against the Insured under:</p> <ul style="list-style-type: none"> • Consumer Protection Act • Food Safety Act • Health & Safety at Work Act • Corporate Manslaughter and Corporate Homicide Act • Indemnity to the insured for legal liabilities arising from the Defective Premises Act • Indemnity to the Insured for legal liabilities arising from Data Protection Act • If the insured comprises more than one party, Insurers will provide indemnity to each party as if a separate policy had been 	<p>by the insured</p> <ul style="list-style-type: none"> • Liquidated damages unless liability would have applied in the absence of a contract • Fines and penalties arising from criminal prosecution • Liability arising from incidents which requires compulsory insurance under the Road Traffic Acts or similar law • Pollution or Contamination in North America or elsewhere where it does not arise due to a sudden identifiable and unforeseen or unexpected event • The insured's cost of recall, repair, alteration or replacement of that part of any product giving rise to a claim

Insurance	Principal Cover	Minimum Sum Insured	Maximum Deductible (see Note 1)	Principal Extensions (see Note 2)	Principal Exclusions
				<p>issued to each party</p> <ul style="list-style-type: none"> • Indemnity to the insured for contingent motor liability arising and unauthorised movement of road vehicles • Indemnity to the insured for unauthorised movement of rolling stock • Insurers accept to abide by the procedures and provisions of the Claims Allocation and Handling Agreement 	<ul style="list-style-type: none"> • Any claim arising from the insured's professional liability but this does not apply to liability arising from death, injury or property damage • Financial loss which is not consequent upon death, injury or property damage

Insurance	Principal Cover	Minimum Sum Insured	Maximum Deductible (see Note 1)	Principal Extensions (see Note 2)	Principal Exclusions
3. Employer's Liability	Indemnity to the insured for all sums which the insured shall become legally liable to pay in respect of death, disease, illness, physical and mental injury	£10,000,000 any one claim during any one period of insurance <i>[Herbert Smith: Minimum sum insured has been reduced due to reduced exposure]</i>	NIL	<ul style="list-style-type: none"> • Indemnity to Principals or any other persons to the extent required by contract • Waiver of subrogation against any party to the extent required by contract • Indemnity to the Insured for legal liabilities arising from Data Protection Act • If the insured comprises more than one party, Insurers will provide indemnity to each party as if a separate policy had been issued to each party • Indemnity to the insured in respect of legal costs and expenses incurred in defending allegations or proceedings brought against the 	

Insurance	Principal Cover	Minimum Sum Insured	Maximum Deductible (see Note 1)	Principal Extensions (see Note 2)	Principal Exclusions
				Insured under: <ul style="list-style-type: none"> • Health & Safety at Work Act • Corporate Manslaughter and Corporate Homicide Act • At the insured's request, the insurer will settle unsatisfied court judgements 	
4. Motor	Third party legal liability in form complying with relevant legislation at all material times	(a) unlimited in respect of personal injury (b) as required by relevant legislation at all material times in respect of third party property damage	£50,000 each and every claim		

Note 1: Where in the columns of this Schedule headed "Deductible" reference is made to "claim" such term shall be deemed to include the terms "loss", "event" or "occurrence" as those later terms may be used in the relevant insurance policies.

Note 2: All policies of insurance of liability in this Schedule must provide that each insured shall be entitled to be indemnified in respect of claims made by any other insured under the same policy. Further all policies of insurance in this Schedule are to contain a waiver by insurers of any rights of subrogation or other action which such insurers may have against any of the insureds under the policy of those insurers

Schedule 6

Records

Schedule 6

Records

Section 1

General

1. Types of Records

1.1 Information Types

HS1 Co is required to retain detailed and comprehensive records in respect of:

1.1.1 the design and construction of HS1;

1.1.2 the maintenance of the HS1 Assets, the Ashford Assets and the operation of passenger and freight services; and

1.1.3 the land interests relating to HS1,

consistent with the type of records normally kept by an operating railway.

1.2 Scope

Records will be categorised as follows:

1.2.1 In respect of design and construction of HS1, the Project Record, relating to: legal; financial; engineering; and environmental matters.

1.2.2 The maintenance and operation records, consisting of: legal; financial; commercial; engineering; operational; and environmental matters.

1.2.3 In respect of the land interests relating to HS1, the records consisting of: legal matters.

1.3 Retention Classes

Retention periods for records will vary depending on their importance and will fall into the following classes, which indicate the minimum retention periods required:

1.3.1 Class A1 In perpetuity

1.3.2 Class 1 For the term of this Agreement

1.3.3 Class 2 15 years from the date of issue of the Final Permit to Use or from the creation, amendment, termination or expiry of the relevant document whichever is later

1.3.4 Class 3 6 years from the date of issue of the Final Permit to Use or from the creation, amendment, termination or expiry of the relevant document whichever is later

1.4 Further Guidance

1.4.1 Records shall be retained as follows:

1.4.1.1 All records of ongoing operational aspects of the system, including all of the records listed in paragraph 3 of Section 2 of this Schedule 6, shall be systematically and periodically up-dated, kept up-dated and replaced. The superseded records shall be filed so as to be readily retrievable and shall be retained for the following periods:

- | | | |
|-----|---------------------------|------------------------------------|
| (a) | detailed daily activities | 2 years |
| (b) | daily summaries | 2 years |
| (c) | weekly summaries | 2 years |
| (d) | monthly summaries | 15 years |
| (e) | annual summaries | For the term of
this Agreement. |

1.4.1.2 Records of aspects of the system which have been superseded, but are still of historical, contractual or legal importance shall be retained and stored in an electronic data management system. Project Records to be retained for the term of the agreement; for maintenance and operations records in this context should be retained for 10 years after being superseded.

1.4.1.3 Records of aspects of the system which are obsolete and are of no historical, contractual or legal significance shall be retained and stored in an electronic data management system and can be disposed of 5 years after becoming obsolete. Hard copies are not to be retained.

1.4.1.4 Superseded and obsolete plans and drawings shall be scanned in an electronic data management system and can be disposed of 5 years after becoming obsolete.

1.4.1.5 Track plans and drawings shall be stored in an electronic data management system.

1.4.1.6 Texts of all documents shall be prepared and recorded using the industry standard form of software system or in PDF format and retained in an electronic data management system.

1.4.1.7 All records in respect of the land interests of HS1 that are retained or stored by HS1 Co as at the Expiry Date or earlier termination of this Agreement shall be delivered to the Secretary of State on such date in accordance with Clause 11.3.2.

1.4.1.8 Those records in respect of the land interests of HS1 that relate to:

- (a) original title deeds shall be held by HS1 Co on behalf of the Secretary of State in their original format;
- (b) copies of the original title deeds and files relating to the negotiation of the land interests of HS1 may be stored in an electronic data management system and/or in hard copy format; and
- (c) material email correspondence in relation to the negotiation of land interests of HS1 shall be stored in an electronic data management system.

1.5 General

- 1.5.1 When there is a conflict between the requirements of this Schedule and a contractual requirement stated elsewhere, the latter shall take precedence.
- 1.5.2 Subject to paragraph 1.5.1 above, the requirements set out in this Schedule indicate the minimum requirements to be complied with.
- 1.5.3 In the event that INTERGRAPH or MICROSOFT shall become obsolete or the use of CD, DVD or other digital media, such as hard drives shall itself become obsolete then the Secretary of State shall acting in a reasonable manner agree with HS1 Co another then commonly used system by way of substitute.

Section 2

2. Design and Construction

2.1 The Project Record

Type	Retention Class
Project Record	1

2.2 Legal

Type	Retention Class
Any	1

2.3 Financial

Type	Retention Class
Any	1

2.4 Engineering

Type	Retention Class
Any	1

2.5 Environmental

Type	Retention Class
Any	1

3. Maintenance and Operation

3.1 Legal

Type	Retention Class
Maintenance Contracts	2
Consultant contractor and supplier records	3

3.2 Financial

Type	Retention Class
Records of payments made under the Maintenance Contracts and any agreement made between HS1 Co and an Operator	2

3.3 Engineering

Type	Retention Class
Asset register update (which includes the Asset Register)	1
Maintenance manuals	2
Information regarding conditions, capability and capacity of HS1 Railway Infrastructure (paragraph 5.1, Schedule 10 [Asset Stewardship and Periodic Review])	3
Maintenance procedures	2
Emergency maintenance procedures	2
Inspection procedures	2
Maintenance programmes	2
Health and safety plans	1
Health and safety files (Construction (Design and Management) Regulations 2007)	1
Rules and regulations	2
Legislative requirements	1
Accident and incident records	1
Records of any modifications made to equipment or infrastructure	1
Reliability records	1
Stores/spare parts procedures, registers and inventories	3
Asset Management Strategy (paragraph 4.1, Schedule 10 [Asset Stewardship and Periodic Review])	1
Initial Asset Management Statement (paragraph 5.11 of Schedule 10 [Asset Stewardship and Periodic Review])	1
Asset Management Annual Statement (paragraph 6.1, Schedule 10 [Asset Stewardship and Periodic Review])	1
Five Year Asset Management Statement (paragraph 8.1, Schedule 10 [Asset Stewardship and Periodic Review])	1
Account Statement (paragraph 4.2, Appendix, Schedule 10 [Asset Stewardship and Periodic Review])	2

3.4 Operational

Type	Retention Class
Annual train performance report (paragraph 6.2, Schedule 3 [Minimum Operational Standards])	1
Three month train performance report (paragraph 6.2, Schedule 3 [Minimum Operational Standards])	2
Audit programme, audit reports and corrective action requests	3

3.5 Environmental

Type

Any

Retention Class

1

4. Land interests

4.1 Legal

Type

Original title deeds

A1

Copies of the original titled deeds

1

Files relating to the negotiation of the land interests of HS1

2

Material email correspondence relating to the negotiation of the land interests of HS1

2

Schedule 7
Dispute Resolution Procedure

[NOT USED]

Schedule 8

Decision Making and Enforcement Procedures

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Schedule 8

Decision Making and Enforcement Procedures

1. Decision Making Procedure

- 1.1 If HS1 Co wishes to refer a matter to the Decision Making Procedure in accordance with [Clauses 10.2.3, 10.2.5 and 10.2.7 [Paragraph 2 Changes] of this Agreement] it shall do so by providing a written notice to the ORR and a copy to the Secretary of State setting out the decision that it seeks and the reasons why it considers that such decision should be given (an "**HS1 Co Review Notice**").
- 1.2 Within 15 Business Days of receipt of an HS1 Co Review Notice, or such longer period as the ORR acting reasonably shall notify HS1 Co and the Secretary of State that it requires, the ORR shall provide a written response to HS1 Co and a copy to the Secretary of State setting out its proposed decision (a "**Proposed Decision**") with respect to the decision sought in HS1 Co's Review Notice together with its reasons in support of the Proposed Decision.
- 1.3 Within 15 Business Days of receipt of a Proposed Decision, HS1 Co may provide to the ORR and the Secretary of State and the Secretary of State may provide to the ORR and HS1 Co such representations, or further representations as it or he wishes to make in relation to the Proposed Decision in the form of a written response to the Proposed Decision (an "**HS1 Co Response**" or a "**Secretary of State Response**" as the case may be).
- 1.4 Subject to paragraph 1.5, within 15 Business Days of receipt of an HS1 Co Response or a Secretary of State Response whichever is later, or such longer period as the ORR acting reasonably shall notify HS1 Co and the Secretary of State that it requires, or, if HS1 Co does not provide an HS1 Co Response and the Secretary of State does not provide a Secretary of State Response within the period specified in paragraph 1.3, within [10] Business Days of the expiry of such period or such longer period as the ORR acting reasonably shall notify HS1 Co and the Secretary of State that it requires, the ORR shall, having considered any representations that HS1 Co and the Secretary of State may have made, provide a notice in writing to HS1 Co and the Secretary of State setting out its final decision (the "**Final Decision**") with respect to the matter submitted to this Decision Making Procedure together with the reasons for that Final Decision.
- 1.5 The ORR shall not be entitled to issue as a Final Decision any decision that modifies the Proposed Decision without first:
 - 1.5.1 providing written notice to HS1 Co and the Secretary of State of any modification it proposes to make;
 - 1.5.2 (unless the proposed modifications are trivial) in that notice specifying a period (not being less than 5 Business Days) from the date of receipt of the notice within which HS1 Co and the Secretary of State may make written representations with regard to the proposed modifications; and
 - 1.5.3 considering any representations that are duly made.
- 1.6 HS1 Co, the ORR and the Secretary of State shall each, at the same time as it or he provides a notice or response or makes representations under this paragraph 1, provide to the others a copy of any document it or he refers to or relies upon in the notice or response or representations unless such document is already in the possession of the others.

2. Enforcement by the ORR

2.1 Subject to paragraphs 2.5 to 2.16, where the ORR is satisfied that HS1 Co is contravening, or is likely to contravene, any of the provisions of this Agreement performance of which is to be monitored by the ORR (namely Clause 5 [Minimum Operational Standards], Clause 7 [Asset Stewardship and Periodic Review], Clause 11 [Records and Accounts], Schedule 3 [Minimum Operational Standards], Schedule 6 [Records and Accounts] and Schedule 10 [Asset Stewardship and Periodic Review]) (a "**Specified Provision**"), the ORR shall be entitled to issue an order (a "**Final Order**") making such provision as it considers requisite for the purpose of securing compliance with such Provision.

2.2 Interim Measures

Where it appears to the ORR that HS1 Co is contravening, or is likely to contravene, a Specified Provision and that urgent action is required having regard in particular to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the Specified Provision, is likely to be done or omitted to be done before a Final Order may be made, the ORR shall be entitled, instead of taking steps toward making a Final Order, to issue a provisional order (a "**Provisional Order**") making such provision as appears to the ORR to be requisite for the purpose of securing compliance with such Specified Provision.

2.3 A Provisional Order shall be binding upon HS1 Co and the Secretary of State until the earlier of:

2.3.1 such time as it is confirmed, with or without modifications, pursuant to the procedures set out in paragraphs 2.4 to 2.16 below;

2.3.2 the expiry of such period (not exceeding three months) as is stated in or under such Order; and

2.3.3 following a challenge to the validity of that Provisional Order in accordance with paragraph 5.1 below, the date of any Court order decreeing that such Provisional Order is invalid or granting relief from compliance with that Provisional Order.

Upon confirmation (with or without modifications) a Provisional Order shall become a Final Order.

2.4 Subject to paragraphs 2.5 to 2.16, the ORR shall be entitled to confirm a Provisional Order, with or without modifications, if it is satisfied that HS1 Co is contravening, or is likely to contravene, a Specified Provision and it considers that the provision made by the Provisional Order (with or without modifications) is requisite for the purpose of securing compliance with such Specified Provision.

2.5 The ORR shall not be entitled to make a Final Order or confirm a Provisional Order unless it has first complied with its obligations under paragraphs 2.6 and 2.8.

2.6 The ORR shall give a written notice to HS1 Co (a "**Notice of Proposed Order**"):

2.6.1 stating that it proposes to make a Final Order or confirm a Provisional Order and setting out its effect; and

2.6.2 setting out:

(a) the Specified Provision that the ORR considers is being or is likely to be contravened;

- (b) the acts or omissions which, in the ORR's opinion, constitute or would constitute contraventions of the Specified Provision; and
- (c) any other facts which, in the ORR's opinion, justify the making or confirming of the order.

- 2.7 Within 20 Business Days of receipt of a Notice of Proposed Order, HS1 Co may provide to the ORR such representations, or further representations, as it wishes to make in relation to the proposed order in the form of a written reply to the proposed order (an "**HS1 Co Reply**").
- 2.8 Within 15 Business Days of receipt of an HS1 Co Reply, or such longer period as the ORR acting reasonably shall notify HS1 Co that it requires, or, if HS1 Co does not provide an HS1 Co Reply within the period specified in paragraph 2.7, within 10 Business Days of the expiry of such period, the ORR shall, having considered any representations that HS1 Co may have made, and subject to paragraph 2.9, issue the Final Order or confirmation of the Provisional Order by giving written notice thereof to HS1Co.
- 2.9 The ORR shall not be entitled to make a Final Order or confirm a Provisional Order that modifies a proposed order without first:
- 2.9.1 providing written notice to HS1 Co of any modification it proposes to make;
 - 2.9.2 (unless the proposed modifications are trivial) in that notice specifying a period (not being less than 5 Business Days) from the date of receipt of the notice within which HS1 Co may make written representations with regard to the proposed modifications; and
 - 2.9.3 considering any representations that are duly made.
- 2.10 If the ORR is satisfied that HS1 Co has agreed to take, and is taking, all such steps as appear to the ORR to be appropriate for HS1 Co to take for the purpose of securing or facilitating compliance with the Specified Provision in question it shall only make a Final Order or make or confirm a Provisional Order, if the ORR considers it appropriate to do so. Where the ORR decides not to make a Final Order or to make or confirm a Provisional Order in these circumstances, it shall give notice to HS1 Co, with a copy to the Secretary of State, to that effect.
- 2.11 A Provisional Order or Final Order:
- 2.11.1 shall require HS1 Co to do, or not to do, such things as are specified in the order or are of a description so specified; and
 - 2.11.2 shall take effect at such time, being the earliest practicable time, as is determined by or under the Order.
- 2.12 HS1 Co and the ORR shall each, at the same time as it provides a notice or reply under this paragraph 2, provide to the other a copy of any document it refers to or relies upon in the notice or reply unless such document is already in the possession of the other.
- 2.13 When issuing a Final Order or Provisional Order the ORR shall at the same time provide a copy to the Secretary of State.
- 2.14 As soon as practicable after issuing a Final Order or a Provisional Order, the ORR shall publish the Order in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- 2.15 The ORR shall not be required to issue a Final Order, or issue or confirm a Provisional Order, if:

- 2.15.1 the ORR considers that the contravention or likely contravention of a Specified Provision is trivial and that it would be inappropriate for that reason to issue or confirm the order;
 - 2.15.2 the ORR's duties under Section 4 of the Railway Act 1993 preclude the making or, as the case may be, the confirmation of the order; or
 - 2.15.3 the Secretary of State has exercised his rights pursuant to paragraph 2.6 of Schedule 3 for so long as such rights are being exercised.
- 2.16 Where the ORR decides not to issue a Final Order or issue or confirm a Provisional Order in these circumstances it shall give a notice to HS1 Co with a copy to the Secretary of State to that effect.

3. Secretary of State's Right to Make Representations

- 3.1 HS1 Co and the ORR shall each provide to the Secretary of State a copy of any notice or other communication it provides under the provisions of paragraph 2 of this Schedule, together with a copy of any document it refers to or relies upon in such notice or communication, at the same time as it provides such notice or communication in accordance with those provisions.
- 3.2 Within 15 Business Days of receipt of such copy notice or communication, the Secretary of State may, if he wishes, provide written representations in regard to the subject matter of such notice or communication and the ORR shall take such representations into account when making any subsequent decision or order in accordance with this procedure.

4. Decisions to be Binding

Final Decisions and Final Orders shall (subject to any interim relief granted by the Court following a challenge in accordance with paragraph 5.1 below) be final and binding upon HS1 Co and (subject as aforesaid) the Secretary of State and the Parties shall comply with them unless and until they are held to be invalid by the Court pursuant to paragraph 5 below.

5. Challenge by the Secretary of State or HS1 Co

- 5.1 Without prejudice to any right of the parties to make an application to the Court under Part 54 of the Civil Procedure Rules 1998, the Secretary of State and/or HS1 Co may challenge the validity of a Final Decision, a Provisional Order or a Final Order on any of the grounds for judicial review of decisions of public authorities (which are applicable to the ORR when carrying out its obligations under this Schedule), including (without limitation):
 - 5.1.1 an error of law;
 - 5.1.2 failure by the ORR to follow the procedures set out in the Decision Making Procedure or Enforcement Procedure; or that
 - 5.1.3 no reasonable regulatory body in similar circumstances would have made the Decision or Order,

provided that he or it commences court proceedings challenging the validity of the Final Decision, Provisional Order or Final Order on one or more of the grounds for judicial review of decisions of public authorities within three calendar months of receipt of the Final Decision, Provisional Order or Final Order. Upon any challenge in accordance with this paragraph the Court may make such order or grant such relief as it thinks fit.

- 5.2 Neither the Secretary of State nor HS1 Co shall be entitled to question, challenge or impugn a Final Decision, a Provisional Order or a Final Order in any proceedings or otherwise refuse to

comply with a Final Decision, a Provisional Order or a Final Order on any ground whatsoever, save as permitted by and in accordance with this Schedule.

5.3 The obligation to comply with a Provisional Order or a Final Order shall be a duty owed to the Secretary of State. Without prejudice to any other rights he may have under this Agreement, the Secretary of State shall be entitled to bring proceedings in the Courts for an injunction or for any other appropriate relief or remedy in respect of any contravention or apprehended contravention of a Provisional Order or a Final Order.

5.4 Without prejudice to any right which the Secretary of State may have by virtue of paragraph 5.3 to bring civil proceedings, the ORR shall be entitled to bring civil proceedings for an injunction or for any other appropriate relief or remedy in respect of a contravention or apprehended contravention of a Provisional Order or a Final Order.

6. No Liability

6.1 In the event that:

6.1.1 a Final Decision or Final Order is successfully challenged;

6.1.2 a Provisional Order expires without being confirmed; or

6.1.3 a Provisional Order is confirmed with modifications,

neither party to this Agreement shall be liable to the other party whether in contract, tort, breach of statutory duty or under any other theory of law in respect of any loss, expense, cost, damage or liability of any kind whatsoever which the other party may incur or may have incurred in consequence of the other party's obligation to comply with such decision or order prior to such successful challenge, order or confirmation.

7. Arbitration Act 1996

7.1 The Arbitration Act 1996 shall not apply to the procedures set out in this Schedule.

Schedule 9

Undertakings and Assurances

Schedule 9

Undertakings and Assurances

Part 1

Planning Memoranda, Environmental Memoranda and Heritage Agreements

1. Planning Memoranda between the Secretary of State and the local authorities listed below:
 - (a) Tonbridge & Malling District Council dated 5th July 1996;
 - (b) Kent County Council dated 10th July 1996;
 - (c) City of Rochester-upon-Medway dated 10th July 1996;
 - (d) Essex County Council dated 10th July 1996;
 - (e) Gravesham Borough Council dated 11th July 1996;
 - (f) London Borough of Islington dated 12th July 1996;
 - (g) Sevenoaks District Council dated 12th July 1996;
 - (h) Ashford Borough Council dated 15th July 1996;
 - (i) Thanet District Council dated 16th July 1996;
 - (j) Dartford Borough Council dated 16th July 1996;
 - (k) Dover District Council dated 16th July 1996;
 - (l) London Borough of Newham dated 17th July 1996;
 - (m) London Borough of Waltham Forest dated 17th July 1996;
 - (n) Maidstone Borough Council dated 18th July 1996;
 - (o) Shepway District Council dated 18th July 1996;
 - (p) London Borough of Hackney dated 19th July 1996;
 - (q) Thurrock Borough Council dated 19th July 1996;
 - (r) London Borough of Havering dated 23rd July 1996;
 - (s) London Borough of Hammersmith & Fulham dated 4th September 1996;
 - (t) London Borough of Barking & Dagenham dated 4th September 1996;
 - (u) London Borough of Camden dated 18th September 1996.

2. Heritage Deed (Listed Buildings and Buildings in Conservation Areas) (executed by the local authorities listed below on the dates indicated)] deemed to include Schedule C as contained within the Environmental Minimum Requirements for Design and Construction (February 1995 Update):
 - (a) London Borough of Camden (19th March 1997);
 - (b) Ashford Borough Council (19th March 1997);
 - (c) Shepway District Council (19th March 1997);
 - (d) Gravesham Borough Council (19th March 1997);
 - (e) London Borough of Hackney (3rd April 1997);
 - (f) London Borough of Islington (22nd May 1997);
 - (g) Maidstone Borough Council (22nd May 1997);
 - (h) Thurrock Borough Council (2nd October 1997).

3. Heritage Deed (Ancient Monuments) executed by English Nature, National Heritage and Eurostar on 17th April 1997.
4. Environmental Memorandum (dated 17 February 1995) as amended (August 1995).

Part 2

Undertakings

The undertakings listed below:

U/T Number	Subject
0154	To London Borough of Newham – Repair of damage caused by underground works including settlement.
0156	To London Borough of Camden – Bus and Coach Parking at London St Pancras Station.
0175	To Gravesham Borough Council & Dartford Borough Council – Site archives for archaeological investigation sites.
0316	To Blue Circle Industries PLC – General Undertaking & Heads of Agreement.
0507	To Blue Circle Industries PLC – Clarification of Heads of Terms Agreement
0642	To British Telecommunications plc – Customer Service Guarantee.
S003	To British Waterways Board – Modifications to Carpenters Road Lock.
S020	To London Borough of Tower Hamlets – Financial contribution to provision of Traffic signals at Waterden Rd/Carpenters Rd junction.
S021	To London Borough of Tower Hamlets – Car parking management to discourage use by non-international passengers at Stratford.

Schedule 10

Asset Stewardship and Periodic Review

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Schedule 10

Asset Stewardship and Periodic Review

1. Definitions

1.1 Without prejudice to Clause 1 of this Agreement, in this Schedule unless the context otherwise requires:

"Acceptable Bank": means:

- (a) a bank or financial institution that has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or A3 or higher by Moody's Investor Services Limited or, where supporting evidence satisfactory to the Secretary of State has been provided by HS1 to the Secretary of State, a comparable rating from another ratings agency or similar institution; or
- (b) any other bank or financial institution approved by the Secretary of State;

"Account Letter": means a letter substantially in the form of Appendix 2 to this Schedule (or such other form as may be agreed by HS1 Co and the Secretary of State);

"Accounts Agent": means the Government Accounts Agent or the HS1 Co Accounts Agent as the case may be;

"Additional Share": means a 30% share or such other percentage as is determined by the ORR in a Periodic Review pursuant to paragraph 9.8 of this Schedule of any future efficiencies or costs savings which HS1 Co shall be entitled to in the circumstances set out in paragraph 9.4 of this Schedule;

"Asset Management Annual Statement": means the annual asset management statement produced in accordance with paragraph 6 of this Schedule;

"Asset Management Strategy": means the strategy produced in accordance with paragraph 4.1 of this Schedule;

"Asset Register": means the list of all assets comprising the HS1 Railway Infrastructure from time to time which is to be updated and kept updated as described in paragraph 4.1.3 of this Schedule;

"Asset Stewardship Purpose": means the purpose specified in paragraph 2.1 of this Schedule;

"Authorised Investment": means an investment made in accordance with paragraphs 5.1.1 or 5.1.2 of Appendix 1 to this Schedule;

"Control Period": means the period from the commencement of this Agreement to the end of the sixth successive Year and thereafter each subsequent period of five successive Years or as otherwise reset by the ORR as part of an Interim Review provided that such reset period cannot exceed five successive Years;

"Costs Savings": means that part of the balance of monies standing to the credit of the Escrow Account at the end of a Control Period as, in the reasonable opinion of the ORR and taking account of future anticipated payments into the Escrow Account, will not be required in order to carry out Renewals and Replacements after the end of that Control Period;

"Costs Efficiency Plan": means a plan for the reduction of the cost of the provision of the HS1 Railway Infrastructure and the level of OMRC for the relevant Control Period;

"Draft Determination": has the meaning given to that term in paragraph 8.4 of this Schedule;

"Due Additional Share": means an Additional Share in respect of which the ORR has determined that HS1 Co has satisfied the provisions of paragraphs 9.6.1 and 9.6.2 of this Schedule;

"Due Performance Incentive Share": means a Performance Incentive Share in respect of which the ORR has determined that HS1 Co has satisfied the provisions of paragraphs 9.3.1 and 9.3.2 of this Schedule;

"EdF Assets": means the assets which are the subject of the EdF Agreements;

"EdF Agreements": means:

- (a) the Umbrella Agreement dated 11 December 2002 between the Secretary of State for Transport, London & Continental Railways Limited, CTRL (UK) Limited, Union Railways (South) Limited, HS1 Limited, Eurostar (UK) Limited, EdF Energy (Services) Limited and EdF Energy plc;
- (b) the leases referred to in the Umbrella Agreement;
- (c) the EDS Master Agreement dated 11 December 2002 between London & Continental Railways Limited, Eurostar (UK) Limited, EdF Energy (Services) Limited and EdF Energy plc;
- (d) the EDS Distribution Agreement dated 11 December 2002 between London & Continental Railways Limited, Eurostar (UK) Limited, EdF Energy (Services) Limited and EdF Energy plc;
- (e) the Section 1 Master Agreement dated 11 December 2002 between CTRL (UK) Limited, EdF Energy (Services) Limited and EdF Energy plc;
- (f) the Section 1 Distribution Agreement dated 11 December 2002 between CTRL (UK) Limited, EdF Energy (Services) Limited and EdF Energy plc;
- (g) the Section 1 Construction Agreement dated 11 December 2002 between Union Railways (South) Limited and EdF Energy Services Limited;
- (h) the Section 2 Master Agreement dated 11 December 2002 dated 11 December 2002 between London & Continental Railways Limited, HS1 Limited, EdF Energy (Services) Limited and EdF Energy plc;
- (i) the Section 2 Distribution Agreement dated 11 December 2002 between HS1 Limited, EdF Energy (Services) Limited and EdF Energy plc;
- (j) the Section 2 Construction Agreement dated 11 December 2002 between HS1 Limited and EdF Energy (Services) Limited,

and all documents ancillary thereto;

"Electronic Signature": has the meaning ascribed to that term in Section 7(2) Electronic Communications Act 2000 (as amended from time to time);

"Escrow Account": means a bank account opened and maintained on the terms set out in Appendix 1 to this Schedule in the joint names of the Secretary of State and HS1 Co;

"Escrow Arrangements": means the arrangements for the management of the Escrow Account specified in paragraph 1 of Appendix 1 to this Schedule;

"Escrow Bank": means the branch of the banking institution chosen or determined in accordance with paragraph 1.1 of Appendix 1 to this Schedule;

"Escrow Rate": means the rate of interest applicable to the Escrow Account from time to time;

"Final Determination": has the meaning given to that term in paragraph 8.8 of this Schedule;

"Five Year Asset Management Statement": means, as the context may require, the statement to be produced by HS1 Co or as approved or determined by ORR pursuant to paragraph 8 or paragraph 10 of this Schedule;

"Government Accounts Agent": means any fit and proper person or persons appointed by the Secretary of State from time to time in accordance with paragraph 1.8 of Appendix 1;

"HS1 Co Accounts Agent": means any fit and proper person or persons appointed by HS1 Co from time to time in accordance with paragraph 1.9 of Appendix 1;

"HS1 Co's General Duty": means the general duty of HS1 Co with respect to asset stewardship of the HS1 Railway Infrastructure set out in paragraph 3.1 of this Schedule;

"HS1 Railway Infrastructure": means the HS1 Assets in so far as these are railway infrastructure (as that term is defined in Regulation 3 [Interpretation] of the Railways Regulations) comprised in the rail link from time to time including the EdF Assets and including upgrades or Specified Upgrades implemented in accordance with paragraph 11 but excluding any estate or interest over any light maintenance depot, the HS1 Stations or Ashford International Station;

"Implementation Information": means the information which HS1 Co is obliged to submit to ORR prior to implementing any Specified Upgrades or other upgrades as set out in paragraph 11.4 of this Schedule;

"Income": means any interest, dividends or other income arising from or in respect of an Authorised Investment;

"Initial Asset Management Statement": has the meaning given to that term in paragraph 5.11 of this Schedule;

"Interim Review": means an interim review that may be carried out at any time in the circumstances specified in paragraph 10 of this Schedule;

"Investment Proceeds": means:

- (a) any net proceeds received by the Escrow Bank upon disposal or realisation of an Authorised Investment; or
- (b) any sum received by the Escrow Bank upon maturity, in respect of an Authorised Investment, but excluding all Income;

"Notice of Material Change": means any notice produced in accordance with paragraph 10.1 and complying with paragraph 10.2 of this Schedule;

"NRIL Network": means the infrastructure comprising railway lines, terminals, land, installations, buildings, apparatus, equipment, signalling and other operational systems and associated facilities (including, where relevant, stations) in respect of which Network Rail holds a Safety Authorisation;

"OMRC": means amounts to be applied by HS1 Co for the purpose of calculating the elements of track access charges to be levied in respect of OMR, such amounts to include:

- (a) costs in respect of management and head office functions; and
- (b) fees levied by the ORR under Section 21A of the CTRL Act; and
- (c) other costs

to the extent in each case that the same are incurred in connection with or in relation to OMR and for the purposes of Clause 10.2.3 and 10.2.5 any such amounts that could be levied in respect of OMR;

"Pass Through Costs" mean those costs arising with respect to OMR which the ORR determines from time to time (any such determination to take effect at the commencement of the next Control Period) are suitable for inclusion in the OMRC adjustment mechanism set out in paragraph 10A of this Schedule and which at the Operative Date include rates, insurance, non-traction energy costs and OMR costs of the EdF Assets;

"Performance Incentive Share": means the proportion of Costs Savings for a Control Period allocated to HS1 Co in accordance with paragraph 9.2 of this Schedule;

"Periodic Review": means the periodic review that shall be carried out by the ORR in accordance with paragraph 7 of this Schedule;

"Periodic Review Process Document": has the meaning given to that term in paragraph 7.5 of this Schedule;

"Relevant Control Period": means the Control Period during which Costs Savings were achieved or the OMR leading to future efficiencies or future cost savings (determined by the ORR pursuant to paragraph 9 of this Schedule) were carried out;

"Renewal and Replacement": means the substitution or replacement of an asset comprised in the HS1 Railway Infrastructure with an asset or part of an asset of the same type or equivalent to the asset comprised in the HS1 Railway Infrastructure from time to time consistent with HS1 Co's General Duty, and excludes Specified Upgrades and any other upgrades;

"Review Year": has the meaning given to it in paragraph 6.1.1 of this Schedule;

"Security Interest": means any indemnity, mortgage, pledge, lien, charge, assignment by way of security, hypothecation or any other security agreement or arrangement which has a commercial effect analogous to the conferring of security;

"Specified Upgrades": means major upgrades of the signalling system, control systems or trackform for:

- (a) HS1 comprised in the HS1 Railway Infrastructure, including any such upgrades required in connection with the implementation of a TSI requirement; and/or
- (b) the NRIL Network, where such upgrades are a consequence of the implementation of a TSI requirement and are required to be undertaken pursuant to a Maintenance Contract with Network Rail;

"Track Access Performance Regime": has the meaning given to it in paragraph 8.1.16 of this Schedule;

"Track Access Possessions Regime": has the meaning given to it in paragraph 8.1.2 of this Schedule; and

"Traction Electricity Charges": means those costs in respect of traction electricity for HS1 which the ORR determines from time to time (any such determination to take effect at the

commencement of the next Control Period) are suitable for inclusion in the OMRC adjustment mechanism set out in paragraph 10A of this Schedule.

Section 1 – Asset Stewardship

2. Asset Stewardship Purpose

2.1 The Asset Stewardship Purpose is to secure in respect of the HS1 Railway Infrastructure:

2.1.1 its operation and maintenance;

2.1.2 its renewal and replacement; and

2.1.3 the planning and carrying out of any Specified Upgrades and other upgrades,

in each case:

(a) in accordance with Best Practice;

(b) in a timely, efficient and economical manner; and

(c) save in the case of the EdF Assets, as if HS1 Co were responsible for the stewardship of the HS1 Railway Infrastructure for the period of 40 years following the date that any such activities are planned or carried out,

subject to:

(i) the Safety Authorisation for HS1; and

(ii) the Capability Requirements.

2.2 Where there is any inconsistency between (i) and (ii) above, limb (i) shall take precedence.

3. HS1 Co's General Duty

3.1 HS1 Co shall achieve the Asset Stewardship Purpose at all times from the Operative Date until the Expiry Date or earlier termination of this Agreement to the greatest extent reasonably practicable having regard to all relevant circumstances.

3.2 The specific obligations set out in paragraphs 4 to 11 below and paragraph 5.1 of Appendix 1 to this Schedule are without prejudice to the generality of HS1 Co's General Duty and compliance with those obligations shall not, in itself, be regarded as exhausting or satisfying that general duty. In fulfilling each of these obligations, HS1 Co shall at all times comply with HS1 Co's General Duty.

4. Asset Management General Obligations

4.1 In complying with HS1 Co's General Duty, HS1 Co shall:

4.1.1 establish, maintain, develop and implement an Asset Management Strategy in respect of OMR and, to the extent appropriate, Specified Upgrades and other upgrades in accordance with the requirements of paragraph 5 below;

4.1.2 maintain appropriate, accurate and up to date information about the assets comprising the HS1 Railway Infrastructure, including information as to their condition, capability and capacity; and

4.1.3 produce, update and keep updated an Asset Register at all times listing the assets comprising the HS1 Railway Infrastructure and their condition, including when they are due to be renewed or replaced.

5. Asset Management Strategy and Initial Asset Management Statement

- 5.1 The Asset Management Strategy referred to in paragraph 4.1.1 shall include:
- 5.1.1 an asset management policy which describes HS1 Co's general operation, maintenance and renewals principles and procedures for the HS1 Railway Infrastructure;
 - 5.1.2 an asset management plan which sets out how such general operation, maintenance and renewals principles will be achieved;
 - 5.1.3 an indicative Renewal and Replacement timetable;
 - 5.1.4 an asset maintenance plan detailing asset-specific procedures and standards for asset types in respect of OMR; and
 - 5.1.5 a description of how the condition, capability and capacity of the assets comprising the HS1 Railway Infrastructure will be maintained.
- 5.2 The Asset Management Strategy shall be provided to the ORR in such format and structure, to such standard and level of detail and in accordance with such requirements as the ORR may, in each case, from time to time, reasonably specify by notice to HS1 Co.
- 5.3 HS1 Co shall from time to time and when so directed by ORR review and, if necessary, revise the Asset Management Strategy to ensure that it remains sufficient to comply with HS1 Co's General Duty.
- 5.4 HS1 Co shall notify the ORR of any revisions which are made to the Asset Management Strategy in accordance with paragraph 5.3 above.
- 5.5 Within 60 Business Days of the Operative Date HS1 Co shall produce and submit to the ORR the Asset Management Strategy.
- 5.6 If the ORR determines that the Asset Management Strategy does not satisfy the requirements of paragraph 4.1 above it shall, within 45 Business Days of receiving the Asset Management Strategy (or such longer period as the ORR may reasonably specify), issue a notice to HS1 Co which shall specify the ways in which it considers the Asset Management Strategy to be deficient. If the ORR does not issue a notice in accordance with this paragraph 5.6, the Asset Management Strategy shall be deemed to be established for the purposes of paragraph 4.1.
- 5.7 Where the ORR determines that the Asset Management Strategy is deficient as aforesaid, HS1 Co shall within 20 Business Days (or such longer period as the ORR may agree to) of receiving a notice from the ORR in accordance with paragraph 5.6 above produce and submit to the ORR an amended or new (as appropriate) Asset Management Strategy which in the reasonable opinion of HS1 Co remedies the deficiencies specified in the ORR's notice and satisfies the requirements of paragraph 4.1.
- 5.8 If the ORR determines that the revised Asset Management Strategy submitted to the ORR under paragraph 5.7 above has failed to remedy the deficiencies specified in its notice issued under paragraph 5.6 or introduces a further deficiency, it shall, within 20 Business Days of receiving the revised Asset Management Strategy (or such longer period as the ORR may reasonably specify), issue a notice to HS1 Co which shall specify the ways in which it considers the revised Asset Management Strategy to be deficient. If the ORR does not issue a notice in accordance with this paragraph 5.8, the Asset Management Strategy shall be deemed to be established for the purposes of paragraph 4.1
- 5.9 Where the ORR determines that the revised Asset Management Strategy is deficient as aforesaid, HS1 Co shall, within 20 Business Days (or such longer period as the ORR may agree to) of receiving a notice from the ORR in accordance with paragraph 5.8 above, produce and

submit to the ORR an amended or new (as appropriate) Asset Management Strategy which remedies the deficiencies specified in the ORR's notice and satisfies the requirements of paragraph 4.1.

5.10 Without prejudice to the generality of paragraph 12, if the ORR considers that the revised Asset Management Strategy submitted pursuant to paragraph 5.9 is deficient it may implement the Enforcement Procedure and if it does not do so the Asset Management Strategy shall be deemed to be established for the purposes of paragraph 4.1.

5.11 HS1 Co shall produce and submit to the ORR no later than 1st January 2010 an initial asset management statement which shall demonstrate how HS1 Co intends to comply with HS1 Co's General Duty and which shall in particular cover the first Control Period and which shall include:

5.11.1 a performance and infrastructure quality plan which includes the condition, capability and capacity of the assets comprising the HS1 Railway Infrastructure and details of any OMR that are to be carried out in the first Control Period; and

5.11.2 details of any Specified Upgrades or other upgrades that are to be carried out in the first Control Period and any reduction or increase in OMR resulting from such Specified Upgrades or other upgrades,

in each case so as to satisfy or be in accordance with HS1 Co's General Duty

(the "**Initial Asset Management Statement**").

5.12 If the ORR determines that the Initial Asset Management Statement submitted pursuant to paragraph 5.11 is not consistent with HS1 Co's General Duty it shall, within 45 Business Days of receiving the Initial Asset Management Plan (or such longer period as the ORR may reasonably specify), issue a notice to HS1 Co which shall specify the ways in which it considers the Initial Asset Management Statement to be deficient.

5.13 Where the ORR determines that the Initial Asset Management Statement is deficient as aforesaid, HS1 Co shall, within 20 Business Days (or such longer period as the ORR may agree to) of receiving a notice from the ORR in accordance with paragraph 5.12, produce and submit to the ORR an amended or new (as appropriate) Initial Asset Management Statement which in the reasonable opinion of HS1 Co remedies the deficiencies specified in the ORR's notice.

5.14 If the ORR determines that the revised Initial Asset Management Statement submitted to the ORR under paragraph 5.13 failed to remedy the deficiencies specified in its notice issued under paragraph 5.12 or introduces a further deficiency, it shall, within 20 Business Days of receiving the revised Initial Asset Management Statement (or such longer period as the ORR may reasonably specify), issue a notice to HS1 Co which shall specify the ways in which it considers the revised Initial Asset Management Statement to be deficient.

5.15 Where the ORR determines that the revised Initial Asset Management Statement is deficient as aforesaid, HS1 Co shall, within 20 Business Days (or such longer period as the ORR may agree to) of receiving a notice from the ORR in accordance with paragraph 5.14 above, produce and submit to the ORR an amended or new (as appropriate) Initial Asset Management Statement which remedies the deficiencies specified in the ORR's notice.

5.16 Without prejudice to the generality of paragraph 12, if the ORR considers that the revised Initial Asset Management Statement submitted to it pursuant to paragraph 5.15 is deficient it may implement the Enforcement Procedure.

6. Asset Management Annual Statement

6.1 HS1 Co shall produce and submit to the ORR:

- 6.1.1 at least 30 Business Days prior to the expiry of each Year (the "**Review Year**") an Asset Management Annual Statement in draft form in respect of that Review Year; and
 - 6.1.2 45 Business Days after the expiry of each Review Year, an Asset Management Annual Statement in final form in respect of that Review Year.
- 6.2 The Asset Management Annual Statement will provide details of:
- 6.2.1 the OMR and any Specified Upgrades and other upgrades HS1 Co has carried out in respect of the relevant Review Year; and
 - 6.2.2 the OMR and any Specified Upgrades and other upgrades HS1 Co intends or is required to carry out in respect of the Year following the Review Year:
- in each case so as to satisfy or be in accordance with HS1 Co's General Duty.
- 6.3 The Asset Management Annual Statement shall include annual accounts showing collection and application of OMR payments and management of the Escrow Account in respect of the Review Year.
- 6.4 HS1 Co shall (subject to satisfying the conditions specified in paragraphs 2 or 3 (as appropriate) in Appendix 1 to this Schedule) be entitled at any time in a Control Period to withdraw from the Escrow Account monies required to fund or reimburse it for the cost of Renewals and Replacements that the Initial Asset Management Statement or the current Five Year Asset Management Statement for that Control Period specified would be carried out.
- 6.5 In addition, if HS1 Co wishes to fund from the Escrow Account any additional Renewals and Replacements not so specified in the current Five Year Asset Management Statement, it will notify the ORR in the Asset Management Annual Statement giving details of the additional Renewals and Replacements, the cost thereof and the amount it wishes to withdraw from the Escrow Account to fund such cost together with:
- 6.5.1 satisfactory evidence that carrying out such Renewals or Replacements is consistent with HS1 Co's General Duty; and
 - 6.5.2 a proposal for an increase in the OMRC in the following Control Period and/or the repayment by HS1 Co of all or part of any amount by the end of the current Control Period to replenish such amount into the Escrow Account.
- 6.6 If the ORR is not satisfied by the evidence and reasons for HS1 Co's proposal and in particular if it determines that the carrying out of Renewals and Replacements pursuant to paragraph 6.5 (above) is not consistent with HS1 Co's General Duty, and such other criteria as the ORR may from time to time following consultation with HS1 Co determine, it shall, within 30 Business Days of receipt of the Asset Management Annual Statement in final form or such longer period as the ORR acting reasonably shall notify HS1 Co, issue a notice to HS1 Co rejecting the withdrawal of such monies and specifying the reasons for its rejection.

Section 2 – Periodic Review

7. Purpose and Process for a Periodic Review

7.1 It is acknowledged and agreed that the purpose of a Periodic Review is to enable, following a fair, transparent and proportionate procedure agreed or determined pursuant to paragraphs 7.4 and 7.5 below, the ORR to approve HS1 Co's proposals or the ORR to determine the relevant matters set out in paragraphs 7 and 8 for the next Control Period. It is further acknowledged and agreed that OMRC so approved or determined by the ORR will comprise:

7.1.1 charges in respect of fixed and common costs, payable to HS1 Co irrespective of the level of HS1 usage; and

7.1.2 charges in respect of costs directly incurred as a result of operating Train Services.

7.2 The OMRC shall be set at the level that is needed to provide for OMR in accordance with HS1 Co's General Duty taking into account:

7.2.1 any monies contained in the Escrow Account other than any such that represent HS1 Co's share of any Cost Savings (in so far as the ORR continues to be of the reasonable opinion, taking account of future anticipated payments into the Escrow Account, that such Costs Savings are not required in order to carry out Renewals and Replacements after the end of the Control Period in which they were achieved) and which are to be paid to HS1 Co;

7.2.2 any monies withdrawn from the Escrow Account pursuant to paragraph 6.5 of this Schedule that have not been repaid into the Escrow Account;

7.2.3 any Authorised Investment or any Investment Proceeds or Income due to be realised therefrom; and

7.2.4 any financial support received or determined to be received from the Secretary of State in accordance with Clause 10.2 [Paragraph 2 Changes] to the extent such financial support relates to HS1 Railway Infrastructure;

but not taking into account any revenue or capital receipt of whatsoever nature other than:

7.2.5 OMRC payable to HS1 Co pursuant to track access agreements; and

7.2.6 warranty, insurance or negligence claims in respect of HS1 Railway Infrastructure.

7.3 It is acknowledged and agreed that the principal input into a Periodic Review is expected to be the Five Year Asset Management Statement.

ORR Initial Consultation

7.4 At least 30 months prior to the end of each Control Period the ORR shall commence a public consultation with HS1 Co and interested persons on the proposed process, timescales and approach for the next Periodic Review. This consultation shall take into account any analysis and consultation on relevant issues that has already been undertaken or is being undertaken by HS1 Co and shall include consideration of:

7.4.1 the timescales required for the preparation of the Five Year Asset Management Statement and what consultation shall be carried out with interested persons in respect of those inputs which shall take into account any consultation that has already been undertaken by HS1 Co;

- 7.4.2 what, if any, other inputs, including by way of example consultancy reports, ORR considers may be required and its reasons for considering that this is the case and the responsibility for producing or commissioning any such inputs and consulting thereon to the extent appropriate having regard to commercial confidentiality;
- 7.4.3 the longstop date (which shall be not later than 60 Business Days before the start of the next Control Period) for the Final Determination by the ORR and the process for making any such determination.

Periodic Review Process Document

7.5 The ORR shall:

- 7.5.1 take into account any representations received from HS1 Co and from any other interested person in response to the public consultation referred to in paragraph 7.4; and
- 7.5.2 as soon as reasonably practicable following the end of the public consultation referred to in paragraph 7.4, and in any event by no later than 26 months prior to the end of the current Control Period notify HS1 Co of, and publish in such manner as it considers appropriate a document (the "**Periodic Review Process Document**"), which shall set out:
- (a) the ORR's determination, acting reasonably, of:
 - (i) the process, timescales and approach for the conduct of the next Periodic Review;
 - (ii) the matters described in paragraphs 7.4.1 to 7.4.3; and
 - (b) an explanation of the grounds on which the ORR reached the determination referred to in paragraph 7.5.2(a).

7.6 Following publication of the Periodic Review Process Document, HS1 Co shall prepare and, in cooperation with the ORR and other stakeholders, develop the inputs for the Periodic Review and the Five Year Asset Management Statement for the next Control Period, in each case in a manner which reflects the process and approach set out in the Periodic Review Process Document.

8. Five Year Asset Management Statement

Draft Five Year Asset Management Statement

- 8.1 HS1 Co shall submit to the ORR in accordance with paragraph 8.1A a draft Five Year Asset Management Statement for the next Control Period which is consistent with HS1 Co's General Duty and which shall contain:
- 8.1.1 a performance and infrastructure quality plan, which sets out the condition, capability and capacity of the assets comprising the HS1 Railway Infrastructure, for the following Control Period;
- 8.1.2 details of any proposed changes to:
- (a) the possessions regimes (other than the cap on liability) set out in the HS1 Passenger Access Terms or the HS1 Freight Access Terms; and
 - (b) any related provisions of the HS1 Passenger Access Terms or the HS1 Freight Access Terms; or

- (c) in so far as it is different to the provisions referred to in sub-paragraphs (a) and (b) above, the possessions regime (other than the cap on liability) contained in and any related provisions of the EUKL Track Access Agreement, the LSER Track Access Agreement or any other track access agreement from time to time between HS1 Co and a train operator for access to HS1 to provide Train Services,

(sub-paragraphs (a) to (c) together being the "**Track Access Possessions Regime**")

8.1.3 details of forecast demand and traffic levels (with supporting evidence) for the following Control Period;

8.1.4 a proposal with respect to the level of OMRC for the following Control Period;

8.1.5 details of any other proposed changes to:

- (a) the provisions of the HS1 Passenger Access Terms or the HS1 Freight Access Terms relating to OMRC, its apportionment as between train operators and the freight supplement charge payable by franchised train operators;

- (b) in so far as it is different to the provisions referred to in sub-paragraphs (a) above, the provisions of the EUKL Track Access Agreement, the LSER Track Access Agreement or any other track access agreement from time to time between HS1 Co and a train operator for access to HS1 to provide Train Services relating to OMRC, its apportionment as between train operators and the freight supplement charge payable by franchised train operators,

(sub-paragraphs (a) and (b) together being the "**Track Access OMRC Charging Provisions**");

8.1.6 any proposed changes to the Asset Management Strategy and details of the OMR that HS1 Co proposes to carry out in order to comply with HS1 Co's General Duty for the following Control Period;

8.1.7 a detailed record of the cost of OMR for the current Control Period and plans for the remainder of the current Control Period;

8.1.8 details of any additional OMRC that the ORR has determined is required by HS1 Co in any subsequent Control Period pursuant to paragraph 10.4 of this Schedule;

8.1.9 details of any Specified Upgrades or other upgrades that have been implemented in the current Control Period and evidence that such Specified Upgrades or other upgrades have been implemented in accordance with Implementation Information, the revised Implementation Information or the further revised Implementation Information pursuant to paragraphs 11.2 to 11.7 and any changes to the information specified in that Implementation Information;

8.1.10 details of any Specified Upgrades or other upgrades which HS1 Co proposes to implement pursuant to paragraph 11.2 in the following Control Period or which the Secretary of State has requested that HS1 Co implement pursuant to paragraph 11.1.1 and the relevant Implementation Information;

8.1.11 details of any amount that has been withdrawn from the Escrow Account to make an Authorised Investment and a report of actual and estimated additional Investment Proceeds or Income arising from that Authorised Investment and whether those amounts have been paid into the Escrow Account;

- 8.1.12 a Costs Efficiency Plan for the following Control Period;
- 8.1.13 details of amounts withdrawn from the Escrow Account pursuant to paragraph 6.5 of this Schedule and any proposal submitted pursuant to paragraph 6.5.3 of this Schedule;
- 8.1.14 details of any Costs Savings and any Performance Incentive Share to which HS1 Co believes it is entitled together with evidence that satisfies the condition set out in paragraph 9.3.2;
- 8.1.15 details of any Performance Incentive Share relating to the previous Control Period to which the ORR determined HS1 Co to be entitled in the previous Periodic Review together with evidence that satisfies the conditions set out in paragraphs 9.3.1 to 9.3.3;
- 8.1.16 details of any Additional Share to which HS1 Co believes it is entitled together with evidence that satisfies the conditions set out in paragraph 9.4;
- 8.1.17 details of any Additional Share relating to the previous Control Period to which the ORR determined HS1 Co to be entitled in the previous Periodic Review together with evidence that satisfies the conditions set out in paragraphs 9.6.1 to 9.6.3;
- 8.1.18 details of any proposed changes to:
 - (a) the performance regimes (other than the cap on liability) set out in the HS1 Passenger Access Terms or the HS1 Freight Access Terms; and
 - (b) any related provisions of the HS1 Passenger Access Terms or the HS1 Freight Access Terms; or
 - (c) in so far as it is different to the provisions referred to in subparagraphs (a) and (b) above, the performance regime (other than the cap on liability) contained in and any related provisions of the EUKL Track Access Agreement, the LSER Track Access Agreement or any other track access agreement from time to time between HS1 Co and a train operator for access to HS1 to provide Train Services,

(subparagraphs (a) to (c) together being the "**Track Access Performance Regime**"); and
- 8.1.19 any other information that the ORR may reasonably require for the purposes of carrying out the Periodic Review.

8.1A HS1 Co shall, in accordance with the timescales set out in the Periodic Review Process Document for the relevant Periodic Review and in any event by no later than 13 months before the end of the current Control Period:

- 8.1A.1 submit the draft Five Year Asset Management Statement to the ORR; and
- 8.1A.2 commence a consultation with the ORR and any other interested person on such draft Five Year Asset Management Statement.

Final Five Year Asset Management Statement

8.2 HS1 Co shall submit to the ORR a final Five Year Asset Management Statement for the next Control Period in accordance with the timescales set out in the Periodic Review Process Document for the relevant Periodic Review and in any event by no later than 10 months before the end of the current Control Period.

- 8.3 The final Five Year Asset Management Statement shall be based on the draft Five Year Asset Management Statement prepared by HS1 Co in accordance with paragraph 8.1, but revised to take account of:
- 8.3.1 the representations received from the ORR and other interested persons in response to the consultation on the draft Five Year Asset Management Statement undertaken by HS1 Co in accordance with paragraph 8.1A; and
 - 8.3.2 any new or revised information as HS1 Co, acting reasonably, considers relevant for the purposes of the Periodic Review.

ORR Draft Determination

- 8.4 The ORR shall, in accordance with the timescales set out in the Periodic Review Process Document for the relevant Periodic Review and in any event by no later than 6 months before the end of the current Control Period, commence a public consultation with HS1 Co and any other interested person on a draft of its determination as to whether it considers, acting reasonably, that the final Five Year Asset Management Statement submitted by HS1 Co in accordance with paragraph 8.2 is consistent with HS1 Co's General Duty (the "**Draft Determination**").
- 8.5 The Draft Determination shall set out:
- 8.5.1 whether the ORR determines, acting reasonably, that the final Five Year Asset Management Statement received from HS1 Co in accordance with paragraph 8.2 is consistent with HS1 Co's General Duty;
 - 8.5.2 an explanation of the grounds on which the ORR made the determination set out in paragraph 8.5.1; and
 - 8.5.3 where the ORR reasonably determines that the final Five Year Asset Management Statement is not consistent with HS1 Co's General Duty, details of the deficiencies to be remedied by HS1 Co in order for the final Five Year Asset Management Statement to be consistent with HS1 Co's General Duty.
- 8.6 The ORR shall take into account any representations received from HS1 Co and any other interested person in response to the public consultation referred to in paragraph 8.4.
- 8.7 HS1 Co shall be entitled, at any time prior to the date which is 4 months before the end of the current Control Period, to:
- 8.7.1 revise the final Five Year Asset Management Statement submitted to the ORR pursuant to paragraph 8.2 including making changes to address any deficiencies identified by the ORR in its Draft Determination;
 - 8.7.2 submit additional information to the ORR in connection with the Periodic Review provided that it was not apparent to HS1 Co, acting reasonably, that such information could and should have been provided to the ORR at the time of the submission of the draft Five Year Asset Management Statement or the submission of the final Five Year Asset Management Statement; and
 - 8.7.3 update any existing information submitted by HS1 Co as part of the Periodic Review.

ORR Final Determination

- 8.8 The ORR shall publish in accordance with the timescales set out in the Periodic Review Process Document and in any event by no later than 60 Business Days prior to the expiry of the current Control Period its final determination as to whether it considers, acting reasonably, that the final

Five Year Asset Management Statement (as may be modified by HS1 Co pursuant to paragraph 8.7) is consistent with HS1 Co's General Duty ("**Final Determination**").

- 8.9 The Final Determination shall be based on the Draft Determination submitted by the ORR but shall:
- 8.9.1 take into account:
- (a) the representations received in response to the consultation carried out by the ORR in accordance with paragraph 8.4; and
 - (b) any revisions to the final Five Year Asset Management Statement, any new information and any modifications to information previously submitted as part of the Periodic Review process, in each case made or submitted by HS1 Co in accordance with paragraph 8.7; and
- 8.9.2 contain an explanation of the grounds on which the ORR makes any determination set out in paragraph 8.10.
- 8.10 If the ORR reasonably determines that the final Five Year Asset Management Statement (as may be modified by HS1 Co pursuant to paragraph 8.7):
- 8.10.1 is consistent with HS1 Co's General Duty the ORR shall approve the Five Year Asset Management Statement and HS1 Co shall thereafter comply with its terms for the relevant Control Period;
- 8.10.2 would be consistent with HS1 Co's General Duty subject to HS1 Co making minor revisions to it, the ORR shall, subject to HS1 Co agreeing to make such minor revisions to the Five Year Asset Management Statement, provisionally approve the Five Year Asset Management Statement and paragraph 8.11 shall apply; or
- 8.10.3 is not consistent with HS1 Co's General Duty the ORR:
- (a) shall determine the OMRC and any associated changes to the Track Access OMRC Charging Provisions, the Track Access Possessions Regime and the Track Access Performance Regime; and
 - (b) may determine those other elements of the Five Year Asset Management Statement which it considers to be inconsistent with HS1 Co's General Duty,
- and, subject to paragraph 8.12, paragraph 8.11 shall apply.
- 8.11 If the ORR makes a determination in accordance with paragraph 8.10.2 or 8.10.3 HS1 Co shall within 20 Business Days of such determination (or such other period as may be agreed by HS1 Co and the ORR) produce and submit to the ORR a revised Five Year Asset Management Statement which:
- 8.11.1 reflects the minor revisions agreed with the ORR (where the ORR makes a determination pursuant to paragraph 8.10.2); and
- 8.11.2 reflects those matters determined by the ORR pursuant to paragraph 8.10.3 (where the ORR makes a determination pursuant to paragraph 8.10.3); and
- 8.11.3 if the ORR reasonably determines that the revised Five Year Asset Management Statement is now consistent with HS1 Co's General Duty, the ORR shall:

- (a) where the ORR originally made a determination pursuant to paragraph 8.10.2, confirm its provisional approval of the Five Year Asset Management Statement; and
- (b) where the ORR originally made a determination pursuant to paragraph 8.10.3, approve the revised Five Year Asset Management Statement,

and thereafter HS1 Co shall comply with the terms of the revised Five Year Asset Management Statement for the relevant Control Period;

8.11.4 if the ORR reasonably determines that the revised Five Year Asset Management Statement is not consistent with HS1 Co's General Duty:

- (a) where the ORR originally made a determination pursuant to paragraph 8.10.2, the ORR shall not confirm its provisional approval of the Five Year Asset Management Statement and:

- (i) shall determine those elements of the OMRC and any associated changes to the Track Access OMRC Charging Provisions, the Track Access Possessions Regime and the Track Access Performance Regime which it considers require modification in order to reflect the minor revisions agreed pursuant to paragraph 8.10.2; and

- (ii) may determine those other elements of the Five Year Asset Management Statement which it considers require modification in order to reflect the minor revisions agreed pursuant to paragraph 8.10.2 and to be consistent with HS1 Co's General Duty; and

- (b) where the ORR originally made a determination pursuant to paragraph 8.10.3, the ORR shall not approve the revised Five Year Asset Management Statement,

and, subject to paragraph 8.12, paragraph 8.13 shall apply.

8.12 If HS1 Co shall feel aggrieved by the Final Determination of the ORR (including any determination made by the ORR pursuant to paragraph 8.10.3, 8.11.4(a) or 8.11.4(b)), it may challenge such determination in accordance with the provisions of paragraph 5.1 (other than paragraph 5.1.2) of Schedule 8 (which determination shall be deemed to be a Final Decision for the purpose of that paragraph) within the period specified therein. If HS1 Co does not commence court proceedings challenging the Final Determination within such period the Final Determination shall be final and binding upon HS1 Co.

8.13 Without prejudice to the generality of paragraph 12, if the ORR reasonably considers pursuant to paragraph 8.11.4(a) or 8.11.4(b) that the revised Five Year Asset Management Statement is not consistent with HS1 Co's General Duty it may implement the Enforcement Procedure.

9. Sharing of Efficiencies

9.1 The Renewal and Replacement elements of track access charges shall be paid into the Escrow Account by HS1 Co. For the avoidance of doubt, the operations and maintenance elements of track access charges shall not be paid into the Escrow Account but shall be applied in accordance with HS1 Co's General Duty and the Five Year Asset Management Statement for the relevant Control Period towards the operation and maintenance of HS1 Railway Infrastructure. To the extent that, because of savings achieved by HS1 Co while complying with HS1 Co's General Duty and the Five Year Asset Management Statement, the operations and maintenance elements of track access charges are not required to fund the operation and maintenance of the HS1 Railway Infrastructure during the relevant Control Period, the amount

not so required shall be retained by HS1 Co to be applied as it determines after the end of that Control Period.

- 9.2 Any Costs Savings achieved in respect of a Control Period shall, subject to any adjustment pursuant to paragraph 9.4 below, be shared on the basis of 70% being allocated by HS1 Co to a reduction of the Renewal and Replacement elements of future OMRC payable by train operators on HS1 and 30% being allocated to HS1 Co Performance Incentive Share. These percentages shall be reviewed by the ORR as part of each Access Charges Review and, if the ORR determines it to be appropriate, varied by notice from the ORR to the parties for the following Control Period and any future Control Periods to ensure that HS1 Co is incentivised to reduce the cost of Renewals and Replacements.
- 9.3 Without prejudice to paragraph 12 [Enforcement Procedure] of this Schedule, any Performance Incentive Share shall be released to HS1 Co from the Escrow Account in accordance with the Escrow Arrangements at the end of the Control Period following the Relevant Control Period subject to HS1 Co providing satisfactory evidence and the ORR determining that:
- 9.3.1 HS1 Co has complied with HS1 Co's General Duty, the Asset Management Strategy and in particular the Five Year Asset Management Statement in respect of the Control Period following the Relevant Control Period;
- 9.3.2 the Costs Savings for the Relevant Control Period were achieved in accordance with HS1 Co's General Duty, the Asset Management Strategy and the Five Year Asset Management Statement for the Relevant Control Period; and
- 9.3.3 the aggregate of the balance of funds in (or to be repaid into) the Escrow Account and the amount of the Renewal and Replacement elements of OMRC proposed by HS1 Co in accordance with paragraph 8.1.1 of this Schedule for the following Control Period (taking into account the Due Performance Incentive Share and any Due Additional Share) are consistent with enabling HS1 Co to comply with HS1 Co's General Duty in so far as it relates to Renewals and Replacements.
- 9.4 HS1 Co shall be entitled to an Additional Share where:
- 9.4.1 it has carried out Renewals and Replacements pursuant to a Five Year Asset Management Statement that would in the reasonable opinion of the ORR be expected to result in efficiencies or costs savings that will accrue after the Expiry Date; and
- 9.4.2 it has provided to the reasonable satisfaction of the ORR a detailed breakdown of the costs of the Renewals and Replacements undertaken pursuant to the relevant Five Year Asset Management Statement and satisfactory evidence that such Renewals and Replacements would result in efficiencies or costs savings that will accrue after the Expiry Date.
- 9.5 HS1 Co shall not be entitled to an Additional Share where the requirements of paragraph 9.4 of this Schedule have not been met.
- 9.6 Without prejudice to paragraph 12 [Enforcement Procedure] of this Schedule, any Additional Share to which HS1 Co is entitled in accordance with paragraph 9.4 above shall be released to HS1 Co from the Escrow Account in accordance with the Escrow Arrangements at the end of the Control Period following the Relevant Control Period subject to HS1 Co providing satisfactory evidence to the ORR and the ORR determining that:
- 9.6.1 HS1 Co has complied with HS1 Co's General Duty, the Asset Management Strategy and in particular the Five Year Asset Management Statement in respect of the Control Period following the Relevant Control Period;

- 9.6.2 the efficiencies or costs savings that the ORR reasonably determined should accrue after the Expiry Date in accordance with paragraph 9.4.1 of this Schedule were achieved in accordance with HS1 Co's General Duty, the Asset Management Strategy and the Five Year Asset Management Statement for the Relevant Control Period; and
- 9.6.3 the aggregate of the balance of funds in (or to be repaid into) the Escrow Account and the amount of the Renewal and Replacement elements of OMRC proposed by HS1 Co in accordance with paragraph 8.1.1 of this Schedule for the following Control Period (taking into account the Due Additional Share and any Due Performance Incentive Share) are consistent with enabling HS1 Co to comply with HS1 Co's General Duty in so far as it relates to Renewals and Replacements.
- 9.7 If the ORR is not satisfied that the amounts referred to in paragraphs 9.3.3 or 9.6.3 above are consistent as stated in those provisions, it may reduce the amount of or refuse the release of any Due Performance Incentive Share or any Due Additional Share.
- 9.8 The amount of the Additional Share (expressed as a percentage) shall be reviewed from time to time by the ORR as part of each Periodic Review and, if the ORR determines it to be appropriate, varied by notice from the ORR to the parties for the following Control Period and any future Control Periods to ensure that HS1 Co is incentivised to reduce the cost of Renewals and Replacements.
- 9.9 Following termination in accordance with Clause 10.3 [Paragraph 3 Change] or pursuant to Clause 13.5 [Termination following an Adverse Relevant Change in Law], if HS1 Co reasonably believes that any Costs Savings had been achieved at the date of termination, it shall apply to the ORR to determine whether any such Costs Savings have been so achieved (and for the purpose of this provision the words "at the end of a Control Period" shall be substituted for "upon the date of termination" in the definition of Cost Savings). The Secretary of State shall pay to HS1 Co a Performance Incentive Share on the date five years after the termination date where HS1 Co has provided to the ORR (copied to the Secretary of State) satisfactory evidence in accordance with paragraph 9.3.2 of this Schedule.
- 9.10 Following the Expiry Date, if HS1 Co believes it is entitled to an Additional Share HS1 Co shall provide to the ORR (copied to the Secretary of State) evidence in accordance with paragraph 9.4.2 of this Schedule and the ORR shall determine whether HS1 Co is entitled to an Additional Share and the Secretary of State shall pay to HS1 Co such Additional Share on the date five years after the Expiry Date where HS1 Co has provided to the ORR (copied to the Secretary of State) satisfactory evidence in accordance with paragraph 9.6.2 of this Schedule.
- 9.11 For the avoidance of doubt, no Performance Incentive Share nor any Additional Share shall be payable to HS1 Co upon or following termination of this Agreement by the Secretary of State as the result of the occurrence of an Event of Default in accordance with Clause 13.
- 9.12 For the further avoidance of doubt, the Renewal and Replacement elements of track access charges relating to the EdF Assets shall not be paid into the Escrow Account and references to Renewals and Replacements in this paragraph 9 and Appendix 1 to this Schedule shall, for the purposes of those provisions, not refer to the EdF Assets.

10. Interim Reviews

10.1 Where:

- 10.1.1 due to circumstances outside HS1 Co's control, there has been a material and significant change to the circumstances on the basis of which the current OMRC was approved, determined or (in the case of the first Control Period) set by HS1 Co; and/or

10.1.2 there has been or is a Change in Circumstances that has satisfied the conditions in Clause 10.2.3.2 and HS1 Co is obliged to pay HS1 Co's Share in accordance with Clause 10.2.15,

such that the level of OMRC for the current Control Period is materially insufficient to enable HS1 Co to comply with HS1 Co's General Duty, HS1 Co may apply to the ORR for an Interim Review by providing a notice of such change in accordance with paragraph 10.2 below.

10.2 A Notice of Material Change shall include:

10.2.1 details of the relevant change;

10.2.2 details (including the estimated cost) of the OMR HS1 Co must carry out in order to comply with HS1 Co's General Duty resulting from the relevant change that were not contained in the Five Year Asset Management Statement;

10.2.3 details (including the estimated cost) of any OMR that were contained in the Five Year Asset Management Statement that HS1 Co need no longer carry out in order to comply with HS1 Co's General Duty as a result of the relevant change occurring; and

10.2.4 details (including the estimated cost) of any OMR that were contained in HS1 Co's Five Year Asset Management Statement the cost of which has increased materially as a result of the relevant change,

and either:

- (i) a proposal with respect to the level of OMRC for the remainder of the current Control Period and the amount of any additional OMRC that will be required in any subsequent Control Period and any other proposed changes to the Five Year Asset Management Statement; or
- (ii) a proposal to reset the Control Period and a Five Year Asset Management Statement for such reset Control Period which shall contain all that is required under subparagraphs 8.1.1 to 8.1.19.

10.3A As soon as reasonably practicable after receipt of the Notice of Material Change which proposes that the Control Period be reset and having taken into account such other information and evidence, including following any consultation with interested persons as the ORR determines to be appropriate:

10.3A1 if the ORR is satisfied that:

- (a) there has been a relevant change in accordance with paragraphs 10.1.1 or 10.1.2;
- (b) the level of OMRC for the current Control Period is materially insufficient for HS1 Co to comply with HS1 Co's General Duty;
- (c) it is appropriate to reset the Control Period; and
- (d) the Notice of Material Change is consistent with HS1 Co's General Duty,

the ORR shall approve the Notice of Material Change and HS1 Co shall comply with the terms of the Five Year Asset Management Statement from the beginning of the reset Control Period.

10.3A2 if the ORR is not satisfied with respect to subparagraphs 10.3.A1(a) to 10.3.A1(c) above, it shall not approve the Notice of Material Change and the ORR shall give reasons to HS1 Co explaining its decision.

10.3 As soon as reasonably practicable after receipt of the Notice of Material Change which does not propose that the Control Period be reset and having taken into account such other information and evidence, including following any consultation with interested persons as the ORR determines to be appropriate:

10.3.1 if the ORR is satisfied that

- (a) there has been a relevant change in accordance with paragraphs 10.1.1 or 10.1.2;
- (b) that the level of OMRC for the current Control Period is materially insufficient for HS1 Co to comply with HS1 Co's General Duty; and
- (c) that any changes to the Five Year Asset Management Statement proposed in accordance with paragraph 10.2 are consistent with HS1 Co's General Duty,

the ORR shall approve the Notice of Material Change.

10.3.2 if the ORR is not satisfied with respect to subparagraphs 10.3.1(a) or 10.3.1(b) above, it shall not authorise HS1 Co to increase the level of OMRC nor approve the Notice of Material Change and the ORR shall give reasons to HS1 Co explaining its decision.

10.4 Without prejudice to paragraph 10.3 or 10.3A above, it is acknowledged that when exercising its function under paragraph 10.3.1 or 10.3A.1, the ORR may determine that it is not appropriate to increase the level of OMRC for the current Control Period to take account of all the consequences of a relevant change and that such costs may be taken account of in setting the OMRC for a subsequent Control Period or subsequent Control Periods.

10.5 If the ORR is satisfied with respect to subparagraphs 10.3.A1(a) to 10.3.A1(c) or 10.3.1(a) and 10.3.1(b) above but reasonably determines that the Notice of Material Change is not consistent with HS1 Co's General Duty the ORR shall give reasons to HS1 Co explaining its decision and details of the deficiencies to be remedied.

10.6 Where the ORR is unable as aforesaid to approve the Notice of Material Change, HS1 Co shall within:

10.6.1 20 Business Days (or such longer period as the ORR may agree to) of receiving reasons from the ORR in accordance with paragraph 10.5 above; or

10.6.2 where the deficiencies identified by the ORR in respect of the level of OMRC or any other aspects of the Notice of Material Change are sufficiently material that it is necessary or appropriate to consult on these matters, such longer period as is agreed between HS1 Co and the ORR or in the absence of such agreement determined by the ORR to be a reasonable period to carry out a consultation and produce and submit further proposals with respect to these matters,

produce and submit to the ORR an amended or new (as appropriate) Notice of Material Change which in the reasonable opinion of HS1 Co takes account of the ORR's comments.

10.7 If:

10.7.1 in the reasonable opinion of the ORR the Notice of Material Change submitted pursuant to paragraph 10.6 is consistent with HS1 Co's General Duty, the ORR shall approve the Notice of Material Change and HS1 Co shall thereafter comply with its terms; or

10.7.2 the ORR reasonably determines that the Notice of Material Change is not consistent with HS1 Co's General Duty, the ORR shall give reasons to HS1 Co explaining its

decision and the ORR (A) shall determine the OMRC and any associated changes to the Track Access OMRC Charging Provisions, the Track Access Possessions Regime and the Track Access Performance Regime and (B) may determine those other elements of the Notice of Material Change which it considers to be inconsistent with HS1 Co's General Duty by the date being no later than 20 Business Days after receiving the revised Notice of Material Change pursuant to paragraph 10.6.

- 10.8 Any changes to the information referred to in paragraph 10.2, provided that it was not possible for HS1 Co to have submitted such information at the time of the relevant submission, that have been notified to the ORR by HS1 Co acting reasonably and in accordance with HS1 Co's General Duty after the relevant submission to the ORR of the Notice of Material Change shall be taken into account by the ORR in its approvals or determinations in accordance with this paragraph 10.
- 10.9 If the ORR makes a determination in accordance with paragraph 10.7.2, HS1 Co shall within 20 Business Days of such determination produce and submit to the ORR a revised Notice of Material Change which is consistent with ORR's determination and which shall demonstrate how it intends to comply with HS1 Co's General Duty for the relevant period.
- 10.10 If the ORR determines that the revised Notice of Material Change submitted pursuant to paragraph 10.9 is not consistent with HS1 Co's General Duty it shall, within 20 Business Days of receiving the Notice of Material Change (or such longer period as the ORR may reasonably specify), issue a notice to HS1 Co which shall specify the ways in which it considers the Notice of Material Change to be deficient. If the ORR does not issue a notice in accordance with this paragraph 10.10, the Notice of Material Change shall be deemed to be approved and HS1 Co shall thereafter comply with its terms.
- 10.11 Where the ORR determines that the Notice of Material Change is deficient as aforesaid, HS1 Co shall, within 15 Business Days (or such longer period as the ORR may agree to) of receiving a notice from the ORR in accordance with paragraph 10.10, produce and submit to the ORR an amended or new (as appropriate) Notice of Material Change which in the reasonable opinion of HS1 Co remedies the deficiencies specified in the ORR's notice.
- 10.12 Without prejudice to the generality of paragraph 12, if the ORR considers that the revised Notice of Material Change submitted to it pursuant to paragraph 10.11 is deficient it may implement the Enforcement Procedure and if the ORR does not do so the Notice of Material Change shall be deemed to be approved and HS1 Co shall thereafter comply with its terms.
- 10.13 If HS1 Co shall feel aggrieved by a refusal by the ORR to authorise an increase in the OMRC pursuant to paragraph 10.3.2, or at the level of OMRC authorised in accordance with paragraph 10.4 or by a determination of the ORR in accordance with paragraph 10.7.2, it may challenge such determination in accordance with the provisions of paragraph 5.1 (other than 5.1.2) of Schedule 8 (which determination or refusal shall be deemed to be a Final Decision for the purpose of that paragraph) within the period specified therein. If HS1 Co does not commence court proceedings challenging the determination or refusal within such period the ORR's determination or refusal shall be final and binding upon HS1 Co.

10A Annual adjustment for Pass Through Costs

- 10A.1 Notwithstanding any provision of the foregoing to the contrary, it is acknowledged and agreed that those elements of OMRC comprising Pass Through Costs and Traction Electricity Charges shall be reviewed and adjusted on an annual basis according to actual (rather than estimated) Pass Through Costs and Traction Electricity Charges for the preceding Year. For the purpose of this review, HS1 Co shall produce to the ORR reasonable evidence that Pass Through Costs and Traction Electricity Charges were efficiently incurred in accordance with a process to be agreed between HS1 Co and the ORR or, failing such agreement, determined by the ORR. No adjustment to OMRC will be made in respect of Pass Through Costs or Traction Electricity Charges that the ORR determines have not been efficiently incurred.

Section 3 – Specified Upgrades

11. Specified Upgrades and upgrades

11.1 In addition to Renewals and Replacements required pursuant to and in order to satisfy HS1 Co's General Duty and in particular to comply with the Asset Management Strategy, it is hereby acknowledged that (subject to paragraphs 11.2 and 11.3 below):

11.1.1 the Secretary of State may request that HS1 Co implement a Specified Upgrade or other upgrade to the HS1 Railway Infrastructure in accordance with the Government's Change procedure set out in Clauses 10.6 to 10.9; or

11.1.2 HS1 Co may implement a Specified Upgrade, or other upgrade to the HS1 Railway Infrastructure, and may recover the costs of such Specified Upgrade or other upgrade through an investment recovery charge of the type permitted in paragraph 3.1.2 of Schedule 4 [Charging Framework] (the "**Additional Investment Recovery Charge**").

Neither an upgrade nor any Specified Upgrade shall be treated as a Renewal or Replacement for the purposes of this Schedule and (other than pursuant to paragraph 11.1.1) nothing in this Schedule shall oblige HS1 Co to carry out Specified Upgrades or any other upgrades.

11.2 If HS1 Co intends to implement a Specified Upgrade or other upgrade pursuant to paragraph 11.1.2 (whether or not as part of an Access Charges Review), it shall submit to the ORR:

11.2.1 details of the Specified Upgrade or other upgrade and evidence that the implementation of such Specified Upgrade or other upgrade is in accordance with HS1 Co's General Duty;

11.2.2 details of the costs of carrying out such Specified Upgrade or other upgrade and evidence that those costs will be efficiently incurred, including where relevant and proportionate providing competitive tenders for the cost of the works and materials from independent contractors;

11.2.3 details of the proposed amount of the Additional Investment Recovery Charge and evidence that such amount will be at a level capable of being borne by operators of Train Services on HS1;

11.2.4 a plan for the implementation of such Specified Upgrade or other upgrade in accordance with HS1 Co's General Duty;

11.2.5 any necessary amendments to the Asset Management Strategy in accordance with HS1 Co's General Duty;

11.2.6 details of any consequential changes to the Five Year Asset Management Statement;

11.2.7 details of any reduction or increase in OMR resulting from such Specified Upgrades or other upgrades; and

11.2.8 any other information the ORR shall reasonably require.

11.3 If the Secretary of State requests that HS1 Co implements a Specified Upgrade or other upgrade pursuant to paragraph 11.1.1, and the provisions of Clause 10.9.6 applies, HS1 Co shall submit to the ORR the information specified in paragraphs 11.2.4 to 11.2.7 above as soon as reasonably possible.

11.4 If in the reasonable opinion of the ORR HS1 Co has provided the information:

- 11.4.1 specified in paragraphs 11.2.1 to 11.2.7 in respect of a Specified Upgrade or other upgrade pursuant to paragraph 11.1.2; or
- 11.4.2 specified in paragraphs 11.2.4 to 11.2.7 in respect of a Specified Upgrade or other upgrade pursuant to paragraph 11.1.1,

("Implementation Information")

and the ORR is satisfied that the Implementation Information is consistent with HS1 Co's General Duty in respect of the Specified Upgrade or other upgrade (as the case may be) in accordance with those provisions, the ORR shall approve those matters which are the subject of the Implementation Information and HS1 Co shall be entitled to carry out the Specified Upgrade or upgrade and (where relevant) recover the Additional Investment Recovery Charge as provided for in that information. If the ORR determines that HS1 Co has failed to provide any of the Implementation Information in accordance with the relevant provisions or the ORR is not satisfied that the Implementation Information is consistent with HS1 Co's General Duty as aforesaid, the ORR shall within 30 Business Days (or such longer period as the ORR may reasonably specify) issue a notice to HS1 Co which shall specify the ways in which the ORR considers that such information is deficient and HS1 Co shall submit within a reasonable period of time revised Implementation Information which remedies the deficiencies specified in the ORR's notice.

- 11.5 If the ORR reasonably determines that the revised Implementation Information submitted to the ORR under paragraph 11.4 has failed to remedy the deficiencies specified in its notice issued under that paragraph or introduces a further deficiency, it shall within 20 Business Days of receiving the revised Implementation Information, issue a notice to HS1 Co which specifies the ways in which such revised Implementation Information is deficient. If the ORR does not issue a notice in accordance with this paragraph 11.5, the Specified Upgrade or upgrade and those matters specified in the revised Implementation Information shall be deemed to be approved and HS1 Co shall thereafter carry out such matters in accordance with such revised Implementation Information.
- 11.6 Where the ORR determines that the revised Implementation Information is deficient as aforesaid, HS1 Co shall, within 20 Business Days (or such longer period as the ORR may agree to) of receiving a notice from the ORR in accordance with paragraph 11.5, produce and submit to the ORR further revised Implementation Information which in the reasonable opinion of HS1 Co remedies the deficiencies specified in the ORR's notice.
- 11.7 Without prejudice to the generality of paragraph 12, if the ORR considers that the further revised Implementation Information submitted to it pursuant to paragraph 11.6 is deficient it may implement the Enforcement Procedure in respect of any such deficiency and if the ORR does not do so those matters specified in the further revised Implementation Information shall be deemed to be approved.
- 11.8 If HS1 Co shall feel aggrieved by a determination by the ORR as to whether the Implementation Information is consistent with HS1 Co's General Duty in accordance with paragraphs 11.4 or 11.5, it may challenge such determination in accordance with the provisions of paragraph 5.1 (other than 5.1.2) of Schedule 8 (which determination shall be deemed to be a Final Decision for the purpose of that paragraph) within the period specified therein. If HS1 Co does not commence court proceedings challenging the determination within such period the ORR's determination shall be final and binding upon HS1 Co.
- 11.9 It is acknowledged and agreed that the processes set out in paragraphs 11.4 to 11.8 shall only apply where a Specified Upgrade or other upgrade is proposed by HS1 Co or requested by the Secretary of State outside an Access Charges Review and that where such Specified Upgrade or other upgrade is proposed as part of an Access Charges Review, it shall be approved as part of the Five Year Asset Management Statement or the Notice of Material Change, in accordance with paragraphs 8 and 10 of this Schedule (as appropriate).

Section 4 – Enforcement and Variation of Processes

12. Enforcement Procedure

Subject to paragraphs 8.12 and 10.13, if the ORR considers that HS1 Co is contravening or is likely to contravene any of the provisions of this Schedule (other than the Appendices) it may implement the Enforcement Procedure.

13. Variation of Schedule 10 Processes

- 13.1 The ORR, the Secretary of State and HS1 Co may from time to time and following such public consultation as the ORR, the Secretary of State and HS1 Co may consider appropriate, vary the processes set out in this schedule in particular in order to facilitate the achievement of purpose and process for a Periodic Review or Interim Review and to facilitate compliance with HS1 Co's General Duty. For the avoidance of doubt the ORR, the Secretary of State and HS1 Co may not by virtue of this provision in any way amend HS1 Co's General Duty.

Appendix 1

1. Escrow Arrangements

- 1.1 Within 10 Business Days of the Operative Date, or thereafter during the HS1 Concession within 10 Business Days of a written request by either party to change the banking institution or branch of that banking institution which provides the Escrow Account, the parties shall use reasonable endeavours to agree the banking institution and the branch of that institution that will hold the Escrow Account on behalf of the parties. In the absence of agreement the choice of banking institution and branch of that institution shall be determined by the Secretary of State acting reasonably.
- 1.2 The parties shall jointly instruct the Escrow Bank to establish in their joint names an interest-bearing deposit account and the parties shall execute a charge over such account substantially in the form of Appendix 5 to this Schedule.

Bank Mandates

- 1.3 The mandates, terms, conditions and operating procedures (collectively, the "**Bank Mandates**") which reference shall include a reference to the Account Letter corresponding or supplemental to the Bank Mandate) shall be agreed (subject to the approval of the Secretary of State) from time to time between the Escrow Bank and HS1 Co. HS1 Co shall execute, and procure that the Escrow Bank executes, an Account Letter. HS1 Co and the Escrow Bank may vary a Bank Mandate from time to time with the prior written consent of the Secretary of State.

No Waiver

- 1.4 Neither the ability to make any withdrawal from the Escrow Account in accordance with this Schedule nor any Bank Mandate nor any such withdrawal shall be construed as a waiver by the Secretary of State of any of its Security Interests over the Escrow Account.

Payments for Renewals and Replacements

- 1.5 None of the restrictions on the withdrawal of funds from the Escrow Account contained in this Schedule shall limit or affect HS1 Co's obligations to make all payments required to be made on their respective due dates for the carrying out of Renewals and Replacements in accordance with the Five Year Asset Management Statement, the Annual Asset Management Statement and HS1 Co's General Duty.

No Instructions

- 1.6 Whenever in this Agreement it is stated that the Secretary of State may make a withdrawal or instruct the Escrow Bank to make or repay an Authorised Investment from or to the Escrow Account and no reference is made to the instructions of HS1 Co, the Secretary of State may make that withdrawal or instruct the Escrow Bank to make or repay an Authorised Investment without any instructions and regardless of any contrary or inconsistent instructions from HS1 Co. The Secretary of State shall notify HS1 Co promptly upon such transfer or payment being made.

Waiver of Rights by HS1 Co

- 1.7 HS1 Co agrees with the Secretary of State not to exercise any right which it may have under any applicable law or contract to direct the Escrow Bank to transfer any amount from the Escrow Account contrary to the provisions of this Schedule unless it has the prior written approval of the Secretary of State.

Government Accounts Agent

- 1.8 The Secretary of State may appoint, from time to time after giving prior notice to HS1 Co, the ORR and the Escrow Bank, a Government Accounts Agent (or more than one) and such notice shall include the identity and contact details of the agent (or agents). Without limiting the Secretary of State's obligations in respect of such matters, HS1 Co agrees that each such agent (or agents) shall carry out or exercise, in respect of the Escrow Account, such of the functions, duties, rights and obligations of the Secretary of State under this Appendix 1 as the Secretary of State may notify to HS1 Co, the ORR and the Escrow Bank from time to time. The Secretary of State shall give to HS1 Co, the ORR and the Escrow Bank notice of his intention to change the agent (or any of them), of the identity and contact details of the agent (or agents), and of the date upon which that change shall have effect.

HS1 Co Accounts Agent

- 1.9 HS1 Co may appoint, from time to time after giving prior notice to the Secretary of State, the ORR and the Escrow Bank an HS1 Co Accounts Agent (or more than one) and such notice shall include the identity and contact details of the agent (or agents). Without limiting HS1 Co's obligations in respect of such matters, the Secretary of State agrees that each such agent (or agents) shall carry out or exercise, in respect of the Escrow Account, such of the functions, duties, rights and obligations of HS1 Co under this Appendix 1 as HS1 Co may notify to the Secretary of State, the ORR and the Escrow Bank from time to time. HS1 Co shall give to the Secretary of State, the ORR and the Escrow Bank notice of its intention to change the agent (or any of them), of the identity of the agent (or agents), and of the date upon which that change shall have effect.

Types of Withdrawals

- 1.10 A withdrawal from the Escrow Account shall be made only by way of written instructions to the Escrow Bank and may be made either by way of cheque, direct debit, BACS or electronic funds bank transfer:
- 1.10.1 in accordance with and subject to the specific provisions in this Schedule; and
 - 1.10.2 in accordance with the Bank Mandate.

2. The Escrow Account

Restrictions on Withdrawals

- 2.1 No withdrawal shall be made from the Escrow Account:
- 2.1.1 if the Escrow Account would become overdrawn as a result;
 - 2.1.2 during the continuance of an Event of Default or after a Final Order or Provisional Order has been made or confirmed but not complied with except in accordance with paragraph 3 [Withdrawals Following an Event of Default or Final or Provisional Order] of this Appendix 1;
 - 2.1.3 if the withdrawal would result in misrepresentation by HS1 Co under paragraph 2.4 [Deemed Representations and Warranties] of this Appendix 1;
 - 2.1.4 if the withdrawal is being made for a purpose other than:
 - (a) to fund Renewals and Replacements that
 - (i) are specified in the Five Year Asset Management Statement for the current Control Period, or

- (ii) are not so specified but in respect of which satisfactory evidence has been provided to the ORR in accordance with the procedure set out in paragraph 6.5 of this Schedule;
- (b) to make an Authorised Investment in accordance with the procedure set out in paragraphs 5.1 to 5.5 of this Appendix (including the payment of any cost, expense or charge payable in connection with the realisation of the whole or any part of an Authorised Investment prior to its scheduled maturity);
- (c) in accordance with paragraph 9.3 or 9.6 [Sharing of Efficiencies] of this Schedule; or
- (d) to fund the implementation of a Paragraph 2 Change;

2.1.5 if it is not permitted by this Agreement.

Withdrawal Procedures

2.2 Other than a withdrawal to be made pursuant to paragraph 3.1 of this Appendix, which shall be made in accordance with and subject to that provision, HS1 Co shall procure that each withdrawal from the Escrow Account shall be preceded by a withdrawal request from HS1 Co to the Secretary of State prepared by HS1 Co which shall:

- 2.2.1 be made in writing and received not later than 11.30 a.m. five Business Days prior to the proposed date of withdrawal;
- 2.2.2 specify the amount of the withdrawal, the purpose for which the withdrawal is being made and the date on which the withdrawal is proposed to be made;
- 2.2.3 include satisfactory evidence that the withdrawal is for one of the purposes set out in paragraph 2.1.4 (a) to (d) and that the relevant provisions of this Agreement relating to those purposes have been complied with;
- 2.2.4 specify whether the withdrawal is to be made by way of cheque, direct debit, BACs or electronic funds bank transfer in accordance with the provisions of paragraph 5.2 of this Appendix 1; and
- 2.2.5 be signed by a statutory officer of HS1 Co or the HS1 Co Accounts Agent as the case may be.

2.3 Subject to paragraph 2.4 of this Appendix, where the Secretary of State is satisfied that HS1 Co has provided the withdrawal request in accordance with the provisions of paragraph 2.2 (above), the Secretary of State shall countersign the withdrawal request and submit it to the Escrow Bank in writing and so that it is received by the Escrow Bank not later than 11.30 a.m. two Business Days prior to the proposed date of withdrawal.

Deemed Representations and Warranties

2.4 On the date of each withdrawal request made under paragraph 2.2 [Withdrawal Procedures] of this Appendix 1 or the date on which HS1 Co instructs the Escrow Bank to make an Authorised Investment in accordance with paragraph 5.2 of this Appendix, and on the date of each withdrawal from the Escrow Account (other than a withdrawal by the Secretary of State in accordance with paragraph 3.1.2 of this Appendix), HS1 Co shall be deemed to represent and warrant to the Secretary of State that:

- 2.4.1 save in the case of a withdrawal pursuant to paragraph 3 [Withdrawals Following an Event of Default or Final or Provisional Order], no Event of Default is subsisting or a

Final or Provisional Order has been made or confirmed and not complied with by HS1 Co and no Event of Default will occur or Final or Provisional Order will be made or confirmed as a result of the withdrawal or the making of the Authorised Investment; and

2.4.2 the withdrawal or (as the case may be) the Authorised Investment is being made:

- (a) for any purpose set out in sub-paragraph (a), (c) or (d) of paragraph 2.1.4 of this Appendix 1 and the payments for which the withdrawal is being made are due and payable or, if not, the withdrawal is being made in accordance with paragraph 2.7 and 2.8 [Advance Withdrawals] of this Appendix 1; or
- (b) in accordance with the procedure for the making of Authorised Investments set out in paragraphs 5.1 to 5.5 of this Appendix 1.

2.5 Where:

2.5.1 the Secretary of State reasonably believes that any of the restrictions in paragraph 2.1 of this Appendix 1 applies; or

2.5.2 the ORR has issued a Final Order or a Provisional Order that has been made or confirmed but not complied with,

then, the Secretary of State shall be entitled not to countersign a request for the withdrawal of monies from the Escrow Account pursuant to paragraph 2.2 or to instruct the Escrow Bank not to make any Authorised Investment in accordance with paragraph 5.2 of this Appendix 1.

Specific Payment

2.6 All amounts withdrawn from the Escrow Account for application towards making a specific payment or meeting a specific liability shall be applied by HS1 Co in or towards making that payment or meeting that liability and for no other purpose.

Advance Withdrawals

2.7 HS1 Co is not permitted to make a withdrawal until the payment in respect of which the withdrawal is to be made is due and payable unless it is impractical to make both a withdrawal in respect of that payment and such payment on the same day that such payment is due and payable.

2.8 The period between the date of withdrawal and the date of payment (both dates inclusive) shall not exceed the minimum number of days necessary (as a practical matter) to enable the payment to be made on the date it is due and payable.

3. Withdrawals Following an Event of Default or Final or Provisional Order

3.1 On and at any time after the occurrence of an Event of Default while such event is continuing unremedied and unwaived (but without prejudice to any other rights of the Secretary of State) or a Final Order or Provisional Order has been made or confirmed but not complied with:

3.1.1 a withdrawal may be made from the Escrow Account; or

3.1.2 the Escrow Bank may be instructed to make an Authorised Investment pursuant to paragraph 5.2 of this Appendix 1; or

3.1.3 the functions of HS1 Co in relation to an Authorised Investment set out in paragraph 5.7 of this Appendix 1 may be carried out,

only by HS1 Co, after having complied with all relevant provisions of this Appendix, with the prior written consent of the Secretary of State (not to be unreasonably withheld or delayed) or by the Secretary of State to enable him to perform obligations under this Agreement that would otherwise be performed by HS1 Co, provided he has given prior written notice to the Escrow Bank.

4. Access and Audit Rights

4.1 HS1 Co irrevocably grants the ORR, the Secretary of State and any of his appointed representatives reasonable access on reasonable notice during normal business hours to review its books and records and other supporting documentation relating to the Escrow Account. HS1 Co shall instruct the Escrow Bank to give the ORR, the Secretary of State and any of his appointed representatives unrestricted access to review all books and records relating to the Escrow Account. The reference to "**unrestricted access**" shall include a right for the ORR, the Secretary of State and any of his appointed representatives to review the Escrow Account by electronic and other means.

4.2 On or before the third Business Day of each calendar month, HS1 Co shall provide a statement (the "**Account Statement**") to the Secretary of State and the ORR of all payments into or from the Escrow Account during the preceding calendar month (which statement shall at a minimum include a description with respect to each payment of the amount and payee, provided that the Secretary of State or the ORR may require a description of the purpose of any payment and such further information as he may reasonably require in connection with such statement) in each case in a form reasonably acceptable to the Secretary of State.

4.3 On or before the fifteenth Business Day of each calendar month commencing with the month in which an Authorised Investment is first made, HS1 Co shall provide a statement to the Secretary of State and the ORR of all investments made, realised or liquidated in previous calendar months, in such detail as the Secretary of State or the ORR may reasonably require.

5. Authorised Investments

5.1 If HS1 Co reasonably believes that there are monies in the Escrow Account not immediately required for any of the purposes set out in paragraphs 2.1.4(a), (c) and (d) of this Appendix, HS1 Co may from time to time by notice in writing signed by a statutory officer of HS1 Co to the ORR and copied to the Secretary of State, request that funds from the Escrow Account be:

5.1.1 placed on deposit with the Escrow Bank or an Acceptable Bank provided that the Acceptable Bank shall have executed a letter substantially in the form of Appendix 4 (or such other form as may be agreed by HS1 Co and the Secretary of State); or

5.1.2 used to purchase Treasury Bills or short-dated gilts rated A- or better by Standard and Poor's or A3 or better by Moody's or, with supporting evidence to the satisfaction of the Secretary of State, a comparable rating from another ratings agency or similar

institution, provided that the issuing financial institution shall have executed a letter substantially in the form of Appendix 4 (or such other form as may be agreed by HS1 Co and the Secretary of State),

for the period during which HS1 Co can demonstrate to the ORR in accordance with the current Five Year Asset Management Statement, the current Asset Management Annual Statement and HS1 Co's General Duty that such funds are not required to fund the carrying out of any other Renewals and Replacements (the "**Investment Period**"), provided that:

- (a) such Investment Period shall not exceed five years provided that where a Control Period commences during an Investment Period, such Investment Period shall end no more than 12 months following the commencement of that Control Period;
- (b) no more than £40,000,000 (or such other amount as the Secretary of State and HS1 Co may at their absolute discretion agree following the end of Control Period 3 is appropriate, having regard to the balance in the Escrow Account and the Renewals and Replacement forecast to be required over the remaining term of this Agreement) shall be deposited in a single Acceptable Bank;
- (c) no more than 90% of the aggregate (as determined at the time the investment is made) of (i) the funds held in the Escrow Account and (ii) any funds invested in any Authorised Investments, may be used for Authorised Investments in any Investment Period;
- (e) HS1 Co is able, within a reasonable period, to withdraw all or part of the funds invested in an Authorised Investment if emergency Renewals and Replacements are required to be undertaken and there are insufficient funds in the Escrow Account; and
- (f) that such amounts including any additional Investment Proceeds or any Income shall, subject to paragraph 5.7 below, be paid into the Escrow Account on the maturity of the relevant Authorised Investment within that Investment Period.

5.2 If the ORR determines that the notice provided by HS1 Co pursuant to paragraph 5.1 of this Agreement satisfies the requirements of that paragraph, the ORR shall inform HS1 Co and the Secretary of State who shall instruct the Escrow Bank to make the Authorised Investments on behalf of the Secretary of State and HS1 Co.

5.3 The Secretary of State and HS1 Co shall from time to time agree on and execute the detailed terms and conditions for the custodianship and management of the Authorised Investments (either by the Escrow Bank or by any such other custodian or investment manager as the Secretary of State and HS1 Co shall agree, as applicable).

5.4 Authorised Investments shall be made in the joint names of the Secretary of State and HS1 Co.

5.5 All documents of title or other documentary evidence of ownership with respect to the Authorised Investments shall be held in the possession of the Escrow Bank or (as the case may be) any custodian appointed in accordance with paragraph 5.3 above (as applicable) and, if any such documents or other evidence comes into the possession or control of HS1 Co, as the case may be, HS1 Co shall procure that the same is delivered immediately to the Escrow Bank or custodian (as applicable).

Non-Qualifying Investments

5.6 If any investment that was originally an Authorised Investment ceases to be an Authorised Investment (which for the avoidance of doubt includes a deposit held at a bank which has ceased to be an Acceptable Bank) HS1 Co shall as soon as reasonably practicable after becoming aware thereof procure that the relevant investment is replaced by an Authorised Investment or by cash which HS1 Co shall repay into the Escrow Account provided that this

paragraph shall not apply to HS1 Co to liquidate any investment earlier than its normal maturity date unless the Secretary of State reasonably requests HS1 Co to do so.

Realisation

- 5.7 HS1 Co may, subject to receiving the consent of the ORR (such consent not to be unreasonably withheld), whenever the Escrow Bank receives any Investment Proceeds or Income instruct the Escrow Bank to reinvest such proceeds or income in further Authorised Investments nominated by HS1 Co provided that such investments will be redeemable within the original Investment Period for the Authorised Investment that yielded the aforementioned Investment Proceeds or Income (and the Secretary of State shall countersign such instruction); but otherwise such Investment Proceeds or Income shall be paid into the Escrow Account.

6. Release of Escrow Account

On expiry or earlier termination of this Agreement all monies credited to the Escrow Account shall be irrevocably and unconditionally released to the Secretary of State subject to any right of HS1 Co to an Additional Share or Performance Incentive Share in accordance with paragraphs 9.3 and 9.6 but subject to paragraph 9.10 of this Schedule and any other existing entitlements arising in accordance with the provisions of this Schedule.

7. Interpretation

- 7.1 Without prejudice to Clause 1 of this Agreement, in this Appendix unless the context otherwise requires:

- 7.1.1 reference to "sign," "countersign" or "execute" or cognate expressions of the same includes signing, countersigning or executing (as the case may be) using Electronic Signatures;
- 7.1.2 reference to "in writing" or "written" includes documents in electronic form; and
- 7.1.3 for the purposes of Clause 19 of this Agreement each of HS1 Co, the ORR and the Secretary of State shall be entitled to use email as a means of sending requests, instructions, directions, notices or other communications relating to the matters referred to in this Appendix 1 between themselves and with the Escrow Bank and any Acceptable Bank.

Appendix 2

Form of account letter from HS1

The Secretary of State for Transport
The Department for Transport
Rail Executive – Passenger Services
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Email Address: [●]

and

HSBC Bank Plc (as the Escrow Bank)
8 Canada Square
London
E14 5HQ

Email Address: [●]

[●] 20[]

Dear Sirs

Account Letter with respect to the Escrow Account

This letter will, inter alia, set out the Escrow Bank's obligations to the Secretary of State in connection with the operation of the Escrow Account.

1. Definitions and Interpretation

- 1.1 The definitions set out in Schedule 1 to this letter shall apply to this letter except where the context otherwise requires.
- 1.2 References to the singular include the plural and vice versa.
- 1.3 References to this letter, any part hereof or of any other agreement or document are references to such letter, part, other agreement or document as amended, supplemented, substituted, novated or assigned from time to time.
- 1.4 Unless the context otherwise requires reference:
 - 1.4.1 to "sign," "countersign" or "execute" and cognate expressions of the same includes signing, countersigning or executing (as the case may be) using Electronic Signatures;
and
 - 1.4.2 to "in writing" or "written" includes documents in electronic form.

2. General

- 2.1 This letter shall become effective at the same time as the HS1 Concession Agreement becomes effective. HS1 Co shall notify the Escrow Bank in writing immediately upon the HS1 Concession Agreement becoming effective.
- 2.2 This letter is to be read in conjunction with the bank mandate applying to the Escrow Account (the "**Bank Mandate**") which is attached hereto as Schedule 2 and may be varied from time to time upon agreement between the Escrow Bank and HS1 Co (subject to the approval of the Secretary of State) and the letter from the Secretary of State (the "**SoS Letter**") which is attached hereto as Schedule 3.
- 2.3 HS1 Co agrees that it shall operate the Escrow Account subject to the terms and conditions of the HS1 Concession Agreement and this letter.
- 2.4 The Escrow Bank agrees that the Escrow Account shall be opened on grounds no less favourable to those offered to customers of equivalent standing.

Bank Mandate and SoS Letter

- 2.5 In the event of any inconsistency between this letter and the Bank Mandate or the SoS Letter this letter shall prevail. HS1 Co and the Escrow Bank may vary the Bank Mandate only with the consent of the Secretary of State. The SoS Letter may be re-issued from time to time by the Secretary of State to designate persons authorised to sign a Withdrawal Request and the re-issuing of such letter shall not be treated as a revocation of any previous SoS Letter unless the Secretary of State indicates otherwise. Any such persons so designated are authorised to sign Withdrawal Requests for and on behalf of the Secretary of State.
- 2.6 Any letter from the Secretary of State or from HS1 Co giving instructions to the Escrow Bank must be signed for and on behalf of the Secretary of State or for and on behalf of HS1 Co as appropriate by authorised signatories. The Escrow Bank shall only be entitled to rely on any such letter, in the case of:
- 2.6.1 the Secretary of State, where such letter has been signed by any person authorised to sign a Withdrawal Request (whether or not such letter is deemed to be a Withdrawal Request) in accordance with the SoS Letter and where such letter is in electronic form and has been sent by email, it was sent from the email address of a Government's Representative or Government Accounts Agent specified for the Secretary of State in clause 7.4 (as may be changed in accordance with Clause 7.5); and
- 2.6.2 HS1 Co, where such letter has been provided on the letter-headed paper of HS1 Co, or where such letter is in electronic form and has been sent by email, it was sent from the email address specified for HS1 Co in Clause 7.4 (as may be changed in accordance with Clause 7.5).

Interest

- 2.7 Each sum credited to the Escrow Account from time to time shall, from the time it so credited until the time it is withdrawn therefrom, bear interest at such rate as HS1 Co shall agree with the Escrow Bank from time to time, and any such interest shall be added to the balance on the Escrow Account. All accrued interest on the Escrow Account shall be credited to the Escrow Account on the Escrow Bank's quarter days. Interest so credited may be used by the Escrow Bank to off-set any bank charges and other costs and expenses accrued and payable on such Escrow Account (together with any tax which in accordance with applicable laws and regulations is required to be withheld or deducted from such interest), as the case may be.

Waiver of Rights by HS1 Co

- 2.8 HS1 Co shall not exercise any right which it may have under any applicable law to direct the Escrow Bank to transfer any amount standing to the credit of the Escrow Account or to its order or to direct the Escrow Bank to transfer any Authorised Investment to any other person or to its order contrary to the provisions of this letter unless it has the prior written approval of the Secretary of State.

Compliance/Conflicting Instructions

- 2.9 The Escrow Bank shall comply with any written instructions given by the Secretary of State under this letter including, for the avoidance of doubt, instructions to transfer sums from the Escrow Account or relating to deposits made by HS1 Co under Clause 3.2.1 (*Withdrawals for Money Management Purposes or Authorised Investments*) or to Authorised Investments. The Escrow Bank shall be entitled to assume that any such instructions are duly given. If the Escrow Bank is in receipt of instructions from both HS1 Co and the Secretary of State, which in the opinion of the Escrow Bank conflict, the Escrow Bank shall disregard the instructions provided by HS1 Co, unless the Secretary of State and HS1 Co deliver instructions to the Escrow Bank which do not conflict within 10 Business Days of such conflict being brought to their attention by the Escrow Bank.

Access and Audit Rights

- 2.10 HS1 Co authorises the Escrow Bank to give the Secretary of State and any of its appointed representatives and the ORR unrestricted access to review all books and records relating to the Escrow Account held by the Escrow Bank. The reference to "unrestricted access" shall include a right for the Secretary of State and any of its appointed representatives to review the Account by electronic and other means without the requirement to require prior HS1 Co consent.

Bank Statements

- 2.11 On or before the third Business Day of every calendar month, the Escrow Bank shall provide bank statements for the Escrow Account to the Secretary of State and the ORR.

Government Accounts Agent and Government's Representative

- 2.12 The Secretary of State may appoint, at any time after giving prior notice to HS1 Co, the ORR and the Escrow Bank, an agent (or more than one) and a representative (or more than one) in relation to this letter and such notice shall include the identity and contact details of the agent (or agents) and representative (or representatives). Without limiting the Secretary of State's obligations in respect of such matters, each such agent and representative shall carry out or exercise, in respect of this letter, such of the functions, duties, rights and obligations of the Secretary of State under this letter as the Secretary of State may notify to HS1 Co, the ORR and the Escrow Bank from time to time. The Secretary of State shall give to HS1 Co, the ORR and the Escrow Bank notice of his intention to change the agent and representative (or any of them), of the identity and contact details of the agent (or agents) and the representative (or representatives), and of the date upon which that change shall have effect.

HS1 Co Accounts Agent

- 2.13 HS1 Co may appoint, at any time after giving prior notice to the Secretary of State, the ORR and the Escrow Bank, an agent (or more than one) in relation to this letter and such notice shall include the identity and contact details of the agent (or agents). Without limiting HS1 Co's obligations in respect of such matters, each such agent shall carry out or exercise, in respect of this letter, such of the functions, duties, rights and obligations of HS1 Co under this letter as HS1 Co may notify to the Secretary of State, the ORR and the Escrow Bank from time to time. HS1 Co shall give to the Secretary of State, the ORR and the Escrow Bank notice of his

intention to change the agent (or any of them), of the identity and contact details of the agent (or agents), and of the date upon which that change shall have effect.

3. Withdrawals from the Escrow Account

Withdrawals other than for Money Management and Authorised Investment Purposes

3.1 A withdrawal from the Escrow Account shall:

3.1.1 be made in accordance with the Bank Mandate applicable to such account;

3.1.2 except if Clause 3.1.3 below applies, be preceded by a Withdrawal Request indicating the amount of the proposed withdrawal and signed by a statutory officer of HS1 Co or the HS1 Co Accounts Agent and by the Secretary of State, in each case received by the Escrow Bank no later than 11:30 a.m. two Business Days prior to the date the withdrawal is to be made; and

3.1.3 in the event that the Secretary of State has given instructions to the Escrow Bank under Clause 2.8 (*Compliance/Conflicting Instructions*) to transfer funds from the Escrow Account or has notified the Escrow Bank under Clause 4.1 (*Withdrawals During a Default*), be made in accordance with the written instructions of the Secretary of State.

Withdrawals for Money Management Purposes or Authorised Investments

3.2 Subject to Clause 3.1.3 (*Withdrawals other than for Money Management and Authorised Investment Purposes*), HS1 Co and the Secretary of State may direct the Escrow Bank to apply an amount from the Escrow Account for the purpose of:

3.2.1 placing such moneys on deposit with the Escrow Bank; or

3.2.2 transferring such moneys to be placed on deposit with an Acceptable Bank; or

3.2.3 making an investment in Treasury Bills or short dated gilts rated A- by Standard and Poor's or A3 by Moody's or, with supporting evidence to the satisfaction of the Secretary of State, a comparable rating from another ratings agency or similar institution.

If the Escrow Bank is directed by HS1 Co and the Secretary of State under this Clause 3.2, HS1 Co shall indicate at the same time, subject to Clause 6.6 (*Deposits*), the maturity date of the deposit.

4. Withdrawals During A Default

4.1 If the Secretary of State notifies the Escrow Bank that an event of default under the HS1 Concession Agreement has occurred and is continuing, a withdrawal may be made from the Escrow Account only by or with the prior written consent of the Secretary of State.

5. Authorised Investments

5.1 HS1 Co and the Escrow Bank may from time to time agree on and execute the detailed terms and conditions, subject to the approval of the Secretary of State, for the custodianship and management of any Authorised Investments which the Secretary of State and HS1 Co have agreed should be held by the Escrow Bank as custodian or managed by the Escrow Bank.

5.2 Authorised Investments shall be made in the joint names of the Secretary of State and HS1 Co.

- 5.3 All documents of title or other documentary evidence of ownership with respect to Authorised Investments shall be held in the possession either of the Escrow Bank in accordance with paragraph 5.1 above or by such other custodian as the Secretary of State and HS1 shall appoint and, if any such document or other evidence comes into the possession or control of HS1 Co it shall procure that the same is delivered immediately either to the Escrow Bank or such other custodian as applicable (and in relation to which either the Escrow Bank or such other custodian (as applicable) have executed the detailed terms and conditions (in the case of the Escrow Bank as referred to in paragraph 5.1 above)).

Realisation

- 5.4 Whenever the Escrow Bank receives any Investment Proceeds or Income, the Escrow Bank shall:

5.4.1 reinvest them in further Authorised Investments nominated by HS1 Co; or

5.4.2 pay them into the Escrow Account;

as HS1 Co and the Secretary of State shall direct in writing.

6. The Escrow Bank

Obligations

- 6.1 The Escrow Bank has only those obligations which are expressly imposed on it by, or assumed by it under, this letter or the Bank Mandates and (subject to, and without limiting those obligations) has no implied or fiduciary obligations.

- 6.2 The Escrow Bank is not responsible or liable to HS1 Co for:

6.2.1 any non-payment of any liability of HS1 Co which could be paid out of monies standing to the credit of the Escrow Account;

6.2.2 any withdrawal wrongly made,

PROVIDED THAT, the Escrow Bank acted in good faith in relation to that liability or withdrawal.

- 6.3 HS1 Co shall indemnify the Escrow Bank against any loss, expense or liability incurred by the Escrow Bank in acting as the Escrow Bank or in acquiring, holding, disposing or realising any Authorised Investment, except to the extent that the loss or liability is caused by the Escrow Bank's breach of its obligations under this letter, gross negligence or wilful misconduct.

- 6.4 Subject to Clause 2.5 (*Bank Mandate and SoS Letter*), the Escrow Bank may rely upon any communication or document believed by it acting reasonably to be genuine and, in particular, rely upon any notice, request or other communication of HS1 Co or the Secretary of State for the purposes of this letter if such notice, request or other communication purports to be signed or sent by or on behalf of an authorised signatory of HS1 Co or the Secretary of State.

- 6.5 Notwithstanding anything to the contrary expressed or implied herein, the Escrow Bank shall not:

6.5.1 be bound to account to any other party to this letter for any sum or the profit element of any sum received for its own account;

6.5.2 save as provided in this letter, be bound to disclose to any other person any information relating to any other party to this letter;

6.5.3 have any responsibility to any party if any instruction which should be given by HS1 Co or the Secretary of State to the Escrow Bank under or in connection with this letter is not given in accordance with Clause 7.4 (*Notices*) at the time it should be given.

6.6 The Escrow Bank does not have and does not accept not accept any responsibility for the accuracy and/or completeness of any information (other than statements provided in accordance with Clause 2.10 (*Access and Audit Rights*) and Clause 2.11 (*Bank Statements*)) or for the legality, validity, effectiveness, adequacy or enforceability of any document and the Escrow Bank shall not be under any liability as a result of taking or omitting to take any action in relation to the Escrow Account including, without limitation, any withdrawals made from the Escrow Account causing it to become overdrawn, save in the case of gross negligence or wilful misconduct or breach of its obligations under this letter (except where such breach arises as a result of the act or omission of another person).

6.7 Each of the other parties to this letter agrees that it will not assert or seek to assert against any director, officer or employee of the Escrow Bank any claim it might have against the Escrow Bank in respect of the matters referred to in this Clause 6.

6.8 The Escrow Bank may accept deposits from, lend money to and generally engage in any kind of banking or other business with, the parties to this letter.

Actions

6.9 Notwithstanding any other provision of this letter, the Escrow Bank shall not be required to act in a manner which would result in its contravening any law.

Replacement

6.10 If (subject to Clause 2.6 (*Interest*) above):

- (a) the Secretary of State so requires; or
- (b) HS1 Co so requires and the Secretary of State consents (such consent not to be unreasonably withheld or delayed); or
- (c) the Escrow Bank so requires having given prior written notice to HS1 Co and the Secretary of State under this letter,

the Escrow Bank shall (as soon as reasonably practicable thereafter) be changed to a London branch of such other bank designated by HS1 Co (with the consent of the Secretary of State, not to be unreasonably withheld or delayed). HS1 Co and the Secretary of State shall do all such things as may reasonably be necessary to facilitate such change. Any change of Escrow Bank shall only become effective upon the new bank entering into bank mandate and account letter in form and substance satisfactory to the Secretary of State and HS1 Co (acting reasonably). Upon such change becoming effective, this Clause 6.10 shall continue to benefit the former Escrow Bank in respect of any action taken or not taken by it under or in connection with this letter while it was Escrow Bank and such bank shall have no further obligations under this letter.

Security and Set-Off

6.11 The Escrow Bank acknowledges that (i) the Escrow Account is the subject of a Security Interest in favour of the Secretary of State and (ii) that it is not entitled to claim or exercise any lien, right of set-off, combination of Escrow Account or other right, remedy or security with respect to moneys standing to the credit of or in the course of being credited to the Escrow Account or with respect to any Income or any Investment Proceeds or other monies other than in accordance with Clause 2.7 (*Interest*).

Breach

- 6.12 The Escrow Bank shall notify the Secretary of State promptly if it becomes aware of a breach of this letter by HS1 Co.

Deposits

- 6.13 Save when contrary instructions have been received by the Escrow Bank from the Secretary of State in the circumstances set out in Clauses 2.8.1 and 2.8.2 (*Compliance/Conflicting Instructions*) of this letter, the Escrow Bank will not (a) hold deposits made by HS1 Co in accordance with Clause 3.2.1 (*Withdrawals for Money Management Purposes or Authorised Investments*) for more than twelve (12) calendar months and (b) transfer any such deposit other than to the Escrow Account, such transfer to be made on the original maturity date of each deposit notified in the Withdrawal Request.
- 6.14 The Escrow Bank will immediately inform HS1 Co and the Secretary of State in writing should it cease to be a bank or financial institution that has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or A3 or higher by Moody's Investor Services Limited or, with supporting evidence to the satisfaction of the Secretary of State, a comparable rating from another credit rating agency or similar institution.

7. Miscellaneous

Conflict

- 7.1 HS1 Co shall not give instructions to the Escrow Bank in breach of the Escrow Account Agreement.

Amendments

- 7.2 No alteration or amendment to this letter and/or the Bank Mandates may be made except in writing by a document expressed to be supplemental to this letter and signed by or on behalf of the parties to this letter.

Further Assurance

- 7.3 Each of the parties agrees to execute and deliver all such further instructions and do and perform all such further acts and things as shall be necessary or expedient for carrying out the provisions of this letter.

Notices

- 7.4 All notices under this letter shall be in writing and all certificates, withdrawal requests, notices or written instructions to be given under the terms of this letter shall be served by sending the same by first class post, email or leaving the same at:

If to HS1 Co: 5th Floor, Kings Place, 90 York Way, London N1 9AG

Email Address: [●]

For the attention of: Chief Executive

If to the Secretary of State: Rail Executive- Passenger Services
Great Minster House, 33 Horseferry Road,,
London SW1P 4DR

Email Address: [●]

For the attention of: HS1 Concession Manager

If to the ORR:

The Office of Rail and Road
25 Cabot Square, London E14 4QZ

Email Address: [●]

For the attention of: Chief Executive

If to HSBC Bank Plc as
Escrow Bank:

8 Canada Square
London
E14 5HQ

Email Address: [●]

For the attention of: Head of Infrastructure & Transport,
Corporate Coverage

Change of Details

- 7.5 Any party to this letter may change its nominated address or email address by prior notice to the other parties. Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) seven days after mailing.

Notices given by email shall be deemed to have been received when the communication is first stored in the recipient's electronic mail box. The place of receipt of any notices given by email shall be deemed to be the postal address for the recipient as set out in Clause 7.4 (as may be changed in accordance with Clause 7.5).

Assignment

- 7.6 No party shall assign or transfer any part of its rights or obligations under this letter without the prior consent in writing of all of the other parties.

Remedies and Waivers

- 7.7 No failure to exercise, nor any delay in exercising, on the part of any party any right or remedy under this letter shall operate as a waiver of that right or remedy, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise of that right or remedy or the exercise of any other right or remedy. The rights and remedies provided in this letter are cumulative and not exclusive of any rights or remedies provided by law.

Partial Invalidity

- 7.8 If at any time any provision of these presents is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this letter nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

Counterparts

- 7.9 This letter may be executed in counterparts each of which shall be construed together as being one letter.

Third Party Rights

7.10 Other than the Government Accounts Agent and the HS1 Co Accounts Agent who shall have such rights as may be granted to them under or in accordance with this letter, no person who is not a party to this letter has any right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this letter but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

Law

7.11 This letter and any non-contractual obligations arising out of it, or in conjunction with it, shall be governed by the law of England and Wales.

Please acknowledge your agreement by signing and returning to HS1 Co the enclosed counterparts of this letter.

Yours faithfully,

.....
For and on behalf of
HS1 Limited

We acknowledge the terms and conditions of the above letter of which this is a copy and agree to be bound by its provisions.

Yours faithfully

.....
For and on behalf of
HSBC Bank Plc

.....
For and on behalf of
The Secretary of State for Transport

Schedule 1

Definitions

"Acceptable Bank" means with respect to any deposit to be made on behalf of HS1 Co by the Escrow Bank, any bank with respect to that deposit designated by written notice from the Secretary of State and HS1 Co to the Escrow Bank;

"Authorised Investment" means an investment in accordance with Clauses 3.2.1, 3.2.2 and 3.2.3 (*Withdrawals for Money Management Purposes or Authorised Investments*);

"Bank Mandate" has the meaning given in Clause 2.2 (*General*);

"Business Day" means a day (other than a Saturday or a Sunday) on which banks are open for business in London;

"Electronic Signature": has the meaning ascribed to that term in Section 7(2) of the Electronic Communications Act 2000 (as amended from time to time);

"Escrow Account" means the bank account designated [●] with account number [●] and sort code [●] held at the Escrow Bank;

"Escrow Bank" means HSBC Bank Plc, a company registered in England with Company Number 00014259 and having its registered office at 8 Canada Square, London, E14 5HQ;

"Government Accounts Agent" means the person or persons appointed by the Secretary of State from time to time in accordance with Clause 2.12 (*Government Accounts Agent*);

"Government's Representative" means the person or person appointed by the Secretary of State from time to time in accordance with Clause 2.12 (*Government's Representative*)

"HS1" means the Channel Tunnel rail link between London St Pancras Station and Cheriton;

"HS1 Co Accounts Agent" means the person or persons appointed by HS1 Co from time to time in accordance with Clause 2.13 (*HS1 Co Accounts Agent*);

"HS1 Co" means HS1 Limited, a company incorporated in England and Wales under number 3539665 and having its registered office at 5th Floor, Kings Place, 90 York Way, London N1 9AG;

"HS1 Concession Agreement" means the concession agreement for the design, construction, financing, operation, repair and maintenance of HS1 dated 14th August 2009 between the Secretary of State and HS1 Limited;

"Income" means any interest, dividends or other income arising from or in respect of an Authorised Investment;

"Investment Proceeds" means:

- (a) any net proceeds received by the Escrow Bank upon disposal or realisation of an Authorised Investment; or
- (b) any sum received by the Escrow Bank upon maturity, in respect of an Authorised Investment, but excluding all Income;

"ORR" means the Office of Rail and Road which has the meaning given to it in Section 15 of the Railways and Transport Safety Act 2003 and shall include all successors given the role of regulatory body under the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016;

"Secretary of State" means the Secretary of State for Transport;

"Security Interest" means any indemnity, mortgage, pledge, lien, charge, assignment by way of security, hypothecation or any other security agreement or arrangement which has a commercial effect analogous to the conferring of security;

"SoS Letter" has the meaning given in Clause 2.2 (*General*); and

"Withdrawal Request" means a request for withdrawal from the Escrow Account signed by or on behalf of HS1 Co and by or on behalf of the Secretary of State.

Schedule 2

Bank Mandate

Schedule 3

SoS Letter

[On Secretary of State Letterhead]

To:

HSBC Bank plc (as the Escrow Bank)
8 Canada Square
London
E14 5HQ

Email: [●]

and

Chief Executive Officer
HS1 Limited
5th Floor, Kings Place
90 York Way
London, N1 9AG

Email: [●]

From: The Secretary of State for Transport
The Department for Transport
Rail Executive – Passenger Services
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Email: [●]

[], 20[]

Dear Sirs,

Re: HS1 Limited ("HS1 Co") - Escrow Account

This letter is being sent to you in connection with the letter (the "**Account Letter**") of HS1 Co addressed to the Secretary of State for Transport (the "**Secretary of State**") and HSBC Bank Plc (as the Escrow Bank) (the "**Account Bank**") in connection with HS1 Co's bank account [*] at the Account Bank.

This is to inform you that Mr/Mrs [*] and/or [*] has/have been designated by the Secretary of State as a person(s) authorised to sign withdrawal requests on behalf of the Secretary of State.

Attached to this letter is a certificate authenticating [*] and [*] respective signatures.

Yours faithfully,

.....
for and on behalf of
The Secretary of State for Transport

Appendix 3
[Not used]

Appendix 4

Form of letter from Acceptable Banks

Secretary of State for Transport
Rail Executive – Passenger Services
Great Minster House
33 Horseferry Road
London SW1P 4DR

Email: [●]

Dear Sir

HS1 Limited ("HS1 Co")

[Acceptable Bank] (the "Bank") has agreed arrangements with HS1 Co (the "Customer") for the placing of moneys, from time to time, on time deposit with the Bank, (each such deposit, when made, together with all interest accruing thereon a "Deposit").

The Bank irrevocably and unconditionally undertakes to the Secretary of State for Transport (the "Secretary of State") that:

1. it will not be entitled to, and shall not claim or exercise any lien, right of set off, combination of accounts or other right, remedy or security with respect to a Deposit (save to set off transaction fees or commissions incurred by it in connection with a Deposit);
2. it will not transfer a Deposit to any person or account other than the [] Account (being Account No. [] at []);
3. it will transfer a Deposit on the original maturity date or such earlier date as may be agreed between the Bank, HS1 Co and the Secretary of State to the account referred to in paragraph 2;
4. it will immediately inform the Secretary of State in writing should it cease to be a bank or financial institution that has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or A3 or higher by Moody's Investor Services Limited or, with supporting evidence to the satisfaction of the Secretary of State, a comparable rating from another ratings agency or similar institution, and thereafter shall (as soon as reasonably possible after being so instructed by HS1 Co and the Secretary of State) transfer the Deposit to the account referred to in paragraph 2 above;
5. notwithstanding anything in this letter, it will comply with written instructions received from the Secretary of State in any way relating to a Deposit whether or not the same conflicts with any instructions received from HS1 Co;
6. HS1 Co or the Secretary of State shall be entitled to send any instructions, notices or other communications arising in connection with this letter or the Deposit to the Bank by email to an email address notified to them by the Bank from time to time; and
7. The Bank shall be entitled to send any notice or other communication arising in connection with this letter or the Deposit:

(a) to the Secretary of State by email to an email address of a representative of the Secretary of State authorised by the Secretary of State to act in respect of this letter or a Deposit as the Secretary of State may notify the Bank from time to time; and

(b) to the Customer by email to an email address of a Customer representative authorised by the Customer to act in respect of this letter or a Deposit as the Customer may notify the Bank from time to time.

Yours faithfully

.....

for and on behalf of

[BANK]

Agreed this day of , 20[]

.....

for and on behalf of HS1 Limited

Appendix 5
Charge over account and deposit moneys

Dated 2010

(1) HS1 LIMITED

(2) THE SECRETARY OF STATE FOR TRANSPORT

CHARGE OVER ACCOUNT AND DEPOSIT MONEYS

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"Default Rate": means 2% per annum above the Bank of England base rate from time to time (provided always that if the relevant base rate is below 0% at any time, the Default Rate shall at such time be 2% per annum).

"Deposit Moneys": means all moneys in any currency from time to time deposited in or standing to the credit of the Account (including all moneys in any currency representing the renewal or replacement of or for any such deposits), all interest from time to time accrued or accruing on all such moneys, all or any moneys payable or repayable pursuant to such deposits or in respect of the Account and in each case the debts represented thereby.

"Expenses": means all costs (including legal fees), charges, expenses and damages sustained or incurred by the Secretary of State at any time in connection with the Charged Property or the Secured Liabilities or in taking, holding or perfecting this Deed or in protecting, preserving, defending or enforcing the security constituted by this Deed or in exercising any rights, powers or remedies provided by or pursuant to this Deed (including any right or power to make payments on behalf of HS1 under the terms of this Deed) or by law in each case on a full indemnity basis.

"Group": means the group comprising HS1 and each of its subsidiaries from time to time, and **"member of the Group"** shall be construed accordingly.

"ITA": means the Income Tax Act 2007.

"Liability Period": means the period beginning on the date of this Deed and ending on the date on which the Secretary of State is satisfied, acting in good faith, that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

"LPA": means the Law of Property Act 1925.

"Qualifying Recipient": means:

(A) a recipient which is beneficially entitled to interest payable to that recipient and is:

a recipient which is:

(a) a company resident in the United Kingdom for United Kingdom tax purposes;

(b) a partnership each member of which is:

(i) a company so resident in the United Kingdom; or

(ii) a company not so resident which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of s19 CTA) the whole of any share of such interest that falls to it by reason of Part 17 CTA; or

(c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account such interest in computing the chargeable profits (within the meaning of s19 CTA) of the company; or

(d) a recipient who is to be paid gross as specified in s936(2) ITA;

(B) a Treaty Recipient.

"Secured Liabilities": means all present and future indebtedness, moneys, obligations and liabilities of or from HS1 to the Secretary of State in respect of Renewal and Replacement under the Concession Agreement.

"Security Interest": means any indemnity, mortgage, pledge, lien, charge, assignment by way of security, hypothecation or any other security agreement or arrangement which has a commercial effect analogous to the conferring of security.

"Tax": means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Tax Confirmation": means a confirmation by a recipient that the person beneficially entitled to interest payable to that recipient is either:

(A) a company resident in the United Kingdom for tax purposes;

(B) a partnership each member of which is:

(a) a company so resident in the United Kingdom; or

(b) a company not so resident which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of s19 CTA) the whole of any share of such interest that falls to it by reason of Part 17 CTA; or

(C) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account such interest in computing the chargeable profits (within the meaning of s19 CTA) of the company; or

(D) a recipient who is to be paid gross as specified in s936(2) ITA.

"Tax Credit": means a credit against, relief or remission for, or repayment of any Tax.

"Treaty Recipient": means a recipient which:

(A) is treated as a resident of a Treaty State for the purposes of the Treaty; and

(B) does not carry on a business in the United Kingdom through a permanent establishment with which that recipient's participation in this Deed is effectively connected.

"Treaty State": means a jurisdiction having a double taxation agreement (a **"Treaty"**) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

"VAT": means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

Construction

1.2 Any reference in this Deed to:

1.2.1 **"HS1"**, the **"Secretary of State"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

1.2.2 **"assets"** includes present and future properties, revenues and rights of every description;

- 1.2.3 a "**benefit**" includes the right to demand or receive money, to exercise all or any rights available at law or in equity, to compel performance and/or to give any notice;
- 1.2.4 "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.5 a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.2.6 a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- 1.2.7 a provision of law is a reference to that provision as amended or re-enacted.
- 1.3 Clause and Schedule headings are for ease of reference only.
- 1.4 Any reference in this Deed to the Concession Agreement or any other agreement or other document shall be construed as a reference to the Concession Agreement or that other agreement or document as the same may have been, or may from time to time be, restated, varied, amended, supplemented, substituted, novated or assigned, whether or not as a result of any of the same:
- 1.4.1 the identity of the parties is changed;
- 1.4.2 there is an increased or additional liability on the part of any person; or
- 1.4.3 a new agreement is effectively created or deemed to be created.
- 1.5 Any reference in this Deed to "**this Deed**" shall be deemed to be a reference to this Deed as a whole and not limited to the particular Clause, Schedule or provision in which the relevant reference appears and to this Deed as amended, novated, assigned, supplemented, extended or restated from time to time and any reference in this Deed to a "**Clause**" or a "**Schedule**" is, unless otherwise provided, a reference to a Clause or a Schedule of this Deed.
- 1.6 Unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.
- 1.7 Where any provision of this Deed is stated to include one or more things, that shall be by way of example or for the avoidance of doubt only and shall not limit the generality of that provision.
- 1.8 It is intended that this document shall take effect as and be a deed of HS1 notwithstanding the fact that the Secretary of State may not execute this document as a deed.
- 1.9 Any change in the constitution of the Secretary of State or its absorption of or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person shall not in any way prejudice or affect its rights under this Deed.
- Third Party Rights***
- 1.10 Nothing in this Deed is intended to confer on any person any right to enforce or enjoy the benefit of any provision of this Deed which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

Account Bank

- 1.11 The Secretary of State and HS1 agree, for the purposes of paragraph 1.1 of appendix 1 to schedule 10 of the Concession Agreement that [] branch of [] shall be the Escrow Bank.

2. Fixed Charge

- 2.1 HS1, as security for the payment, performance and discharge of all the Secured Liabilities, charges in favour of the Secretary of State by way of first fixed charge all of its present and future right, title, benefit and interest in and to:

2.1.1 the Account and the Deposit Moneys; and

2.1.2 the Authorised Investments.

3. Floating Charge

Creation of Floating Charge

- 3.1 HS1 with full title guarantee and as a continuing security for the payment, discharge and performance of all of the Secured Liabilities, charges in favour of the Secretary of State by way of a first floating charge the assets referred to in Clause 2.1 (*Fixed Charge*) above, insofar as the fixed charges constituted by Clause 2.1 (*Fixed Charge*) above, shall for any reason be ineffective as fixed charges.

4. Interest

- 4.1 HS1 covenants with the Secretary of State to pay interest on any amount due under this Deed from day to day until full discharge (whether before or after judgment, liquidation, winding-up or administration of any person) at the Default Rate, on the basis that all such interest will be payable upon such days in each year as the Secretary of State (acting reasonably) shall from time to time fix and will be compounded with rests on such days in each year in the event of it not being so paid but without prejudice to the right of the Secretary of State to require payment of such interest on demand at any time and provided that such interest shall accrue and be payable as from the date on which the relevant amount arose without the necessity for any demand being made for payment.

5. Expenses, Stamp Taxes and Indemnities

Expenses

- 5.1 HS1 shall, within three business days of demand, pay to the Secretary of State the amount of all costs and expenses (including legal fees) incurred by him in connection with the enforcement of, protection and/or preservation of, any rights, remedies and powers under this Deed or the security constituted, or intended to be constituted, by this Deed.

Stamp Taxes

- 5.2 HS1 shall pay, and shall promptly on demand indemnify the Secretary of State against any cost, loss or liability he incurs in relation to, all stamp duty, registration and similar Taxes payable in connection with the entry into, performance or enforcement, of this Deed, the security constituted by this Deed.

General Indemnity

- 5.3 HS1 shall, notwithstanding the release or discharge of all or any part of the security constituted by this Deed, promptly indemnify the Secretary of State against any cost, loss, liability or

damage incurred by him (except to the extent any such cost, loss, liability or damage is caused by the gross negligence or wilful default of the Secretary of State) as a result of:

- 5.3.1 any default by HS1 in the performance of any of the obligations expressed to be assumed by it in this Deed (including without limitation, any delay where such delay constitutes a default by HS1 in the performance of the relevant obligation);
- 5.3.2 the taking, holding, protection or enforcement of the security constituted by this Deed; and
- 5.3.3 the exercise of any of the rights, powers, discretions and remedies vested in the Secretary of State by this Deed or by law in respect of the Charged Property.

Currency Indemnity

5.4 If any sum owing by HS1 under this Deed (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- 5.4.1 making or filing a claim or proof against HS1;
- 5.4.2 obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings, or
- 5.4.3 applying the Sum in satisfaction of any of the Secured Liabilities,

HS1 shall as an independent obligation, within three Business Days of demand, indemnify the Secretary of State against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between:

- 5.4.4 the rate of exchange used to convert that Sum from the First Currency into the Second Currency; and
- 5.4.5 the rate or rates of exchange available to that person at the time of its receipt of any amount paid to it in satisfaction, in whole or in part, of such claim, proof, order, judgment or award.

5.5 HS1 waives any right it may have in any jurisdiction to pay any amount under this Deed in a currency or currency unit other than that in which it is denominated or, if different, is expressed to be payable.

Value Added Tax

5.6 Any cost or expense referred to in this Clause 5 is exclusive of any VAT that might be chargeable in connection with that cost or expense. If any VAT is so chargeable, it shall be paid by HS1 at the same time as it pays the relevant cost or expense against production of a VAT invoice for such costs or expenses by the Secretary of State.

6. Effectiveness of Security

Continuing Security

6.1 The security constituted by this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, unless and until discharged by the Secretary of State and will extend to the ultimate balance of all the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

Cumulative Rights

- 6.2 The security constituted by this Deed and all rights, powers and remedies of the Secretary of State provided by or pursuant to this Deed or by law shall be cumulative and in addition to, and independent of, any other guarantee or Security Interest now or subsequently held by the Secretary of State for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law. No prior Security Interest held by the Secretary of State over the whole or any part of the Charged Property shall be superseded by, or supersede or merge into, the security constituted by this Deed.

Reinstatement

- 6.3 If any discharge, release or arrangement (whether in respect of the obligations of HS1 or any Security Interest for those obligations or otherwise) is made by the Secretary of State in whole or in part on the faith of any payment, Security Interest or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of HS1 under, the security constituted by this Deed will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- 6.4 The Secretary of State may concede or compromise any claim that any payment or any discharge is liable to avoidance or restoration.

Immediate Recourse

- 6.5 HS1 waives any right it may have of first requiring the Secretary of State to proceed against or enforce any other rights or Security Interest or claim payment from any person or file any proof or claim in any insolvency, administration, winding up or liquidation proceedings relating to any person before claiming from it under this Deed. This waiver applies irrespective of any law or any provision of the Concession Agreement to the contrary.

Appropriations

- 6.6 Until all the Secured Liabilities, and all amounts which may be or become due and payable in respect of the Secured Liabilities, have been irrevocably paid, performed and discharged in full, the Secretary of State (acting reasonably) may:
- 6.6.1 without affecting the liability of HS1 under this Deed:
- (a) refrain from applying or enforcing any other moneys, Security Interest or rights held or received by it in respect of the Secured Liabilities; or
 - (b) apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and HS1 shall not be entitled to direct the appropriation of any such moneys, Security Interest or rights or to enjoy the benefit of the same; and/or
- 6.6.2 hold in a suspense account any moneys received from or on behalf of HS1 in respect of the Secured Liabilities. Amounts standing to the credit of any such suspense account shall bear interest at a rate considered by the Secretary of State to be a fair market rate.

7. Perfection of Security

Acknowledgement

- 7.1 The execution of this Deed by HS1 and the Secretary of State shall constitute notice to the Secretary of State of the charge created by this Deed over the Account and the Deposit Moneys.

Documents

7.2 HS1 shall promptly:

7.2.1 notify the Secretary of State of all certificates of deposit, deposit receipts and other title documents or securities from time to time relating to the Account and/or the Authorised Investments the subject of security under this Deed (the "**Title Documents**"); and

7.2.2 at the request of the Secretary of State, deposit with the Secretary of State, and permit the Secretary of State during the subsistence of this Deed to hold and retain, at any place of business of the Secretary of State or with any correspondents or other agents of the Secretary of State all Title Documents together, where appropriate, with all forms of transfer or other instructions (duly executed) relating to the Account and/or the Authorised Investments as the Secretary of State may from time to time reasonably require,

subject to any agreement reached between the Secretary of State, the Escrow Bank and HS1 Co in relation to documents of title and other documentary evidence of ownership with respect to Authorised Investments pursuant to the Account Letter (as defined in the Concession Agreement).

8. Further Assurance

Further Assurance

8.1 HS1 shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Secretary of State may reasonably specify (and in such form as the Secretary of State may reasonably require in favour of the Secretary of State or its nominee(s)) to:

8.1.1 perfect the security created or intended to be created in respect of the Charged Property (which may include the execution by HS1 of a mortgage, charge, assignment or other Security Interest over all or any of the assets forming part of, or which are intended to form part of, the Charged Property);

8.1.2 facilitate the exercise of any rights, powers and remedies of the Secretary of State provided by or pursuant to this Deed or by law; and/or

8.1.3 facilitate the realisation of the assets which form part of, or are intended to form part of, the Charged Property.

Necessary Action

8.2 HS1 shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any security conferred or intended to be conferred on the Secretary of State by or pursuant to this Deed.

Implied Covenants for Title

8.3 The charge granted by HS1 under this Deed is granted with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994, save that the covenants set out in Section 2(1)(a) and Section 3 of that Act shall extend to HS1 without, in each case, the benefit of Section 6(2) of that Act.

9. Representations

General

- 9.1 HS1 makes the representations and warranties set out in Clauses 9.1 to 9.18 to the Secretary of State on the date of this Deed.

Status

- 9.2 It is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation and it has the power to own its assets and carry on its business as it is being conducted.

Binding Obligations

- 9.3 The obligations expressed to be assumed by it in this Deed are legal, valid, binding and (subject to insolvency laws and laws affecting creditors generally) enforceable obligations and (without limiting the generality of the foregoing) this Deed creates the security which it purports to create and that security is valid and effective.

Power and Authority

- 9.4 It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.
- 9.5 No limit on its powers will be exceeded as a result of the grant of security contemplated by this Deed.

Non-conflict with Other Obligations

- 9.6 The entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the security under this Deed do not and will not conflict with:
- 9.6.1 any law or regulation applicable to it (provided that, without prejudice to Clause 10.8, in respect of regulations which do not have the force of law only, this Clause 9.6.1 shall only apply to such regulations with which it is customary for companies in the same business as HS1 to comply);
- 9.6.2 its constitutional documents; or
- 9.6.3 any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument,

nor (except as provided in this Deed) result in the existence or imposition of, or oblige it to create, any Security Interest in favour of any person over all or any of its assets.

Insolvency and Centre of Main Interests and Establishments

- 9.7 It is not insolvent as defined in the Insolvency Act 1986 and is able to pay its debts as they fall due and, for the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings, its centre of main interest (as that term is used in article 3(1) of that Regulation) is situated in its jurisdiction of incorporation and it has no "**establishment**" (as that term is used in article 2(h) of that Regulation) in any other jurisdiction.

Validity and Admissibility in Evidence

- 9.8 All authorisations, consents, approvals, resolutions, licences, exemptions, filings, notarisations or registrations required or desirable to:
- 9.8.1 enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed;
 - 9.8.2 make this Deed admissible in evidence in its jurisdiction of incorporation; and
 - 9.8.3 enable it to create any security expressed to be created by it by or pursuant to, or, as the case may be, any security expressed to have been created by it and to be evidenced in, this Deed and to ensure that such security has the priority and ranking it is expressed to have,

have been obtained or effected and are in full force and effect, except for any registrations and filings referred to in Clause 9.12 (*No Filing or Stamp Taxes*).

Governing Law and Enforcement

- 9.9 The choice of English law as the governing law of this Deed will be recognised and enforced in its jurisdiction of incorporation.
- 9.10 Any judgment obtained in the courts of England in relation to this Deed (or, in the case that this Deed confers jurisdiction to settle disputes on any other courts, any judgment obtained in those other courts) will be recognised and enforced in its jurisdiction of incorporation.
- 9.11 It has entered into this Deed for private, commercial purposes and, in any proceedings taken in its jurisdiction of incorporation in relation to this Deed, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

No Filing or Stamp Taxes

- 9.12 Under the law of its jurisdiction of incorporation it is not necessary that this Deed be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar taxes or fees be paid on or in relation to this Deed or the transactions contemplated by this Deed, except registration of particulars of this Deed at the Companies Registration Office in England and Wales under Section 860 of the Companies Act 2006 and payment of associated fees.

No Misleading Information

- 9.13 To its knowledge, all factual, written information provided by it (including its advisers) to the Secretary of State in connection with this Deed was true, complete and accurate in all material respects as at the date it was provided and, as at such date, was not misleading in any respect.

No Proceedings Pending or Threatened

- 9.14 No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, is reasonably likely to have a material affect on the efficacy of the security created under this Deed (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it.

Creation of Security

- 9.15 This Deed creates or, as applicable, evidences in favour of the Secretary of State the security which it purports to create or evidence with the ranking and priority which it is expressed to have.

9.16 Without limiting Clause 9.15 above, its payment obligations under this Deed rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

9.17 No Security Interest exists over all or any of the Charged Property and no arrangement or transaction prohibited by Clause 10.2 below has been entered into by it and is outstanding.

Good Title to Assets

9.18 It is the beneficial owner of the assets over which it purports to grant security under this Deed.

Continuing Representations

9.19 HS1 undertakes with the Secretary of State that the representations and warranties in this Clause 9 (other than 9.12 (*No Filing of Stamp Taxes*), 9.14 (*No Proceedings Pending or Threatened*) and 9.17 (*Creation of Security*)) will be true and accurate throughout the continuance of this Deed by reference to the facts and circumstances existing from time to time.

10. Undertakings

General

10.1 The undertakings in this Clause 10 remain in force from the date of this Deed for so long as any amount is outstanding under this Deed.

Negative Pledge

10.2 HS1 shall not create or extend or permit to arise or subsist any Security Interest (other than any Security Interest constituted by this Deed) over the whole or any part of the Charged Property or enter into any arrangement or transaction other than as permitted under the Concession Agreement or with the prior written consent of the Secretary of State.

10.3 HS1 shall not enter into any arrangement under which all or any of the Deposit Moneys or the benefit of the Account may be applied, set-off or made subject to a combination of accounts or enter into any other preferential arrangement having a similar effect in circumstances where the arrangement is entered into primarily as a method of raising finance or of financing the acquisition of an asset, other than as permitted under the Concession Agreement or with the prior written consent of the Secretary of State.

Restriction on Disposals

10.4 HS1 shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, assign, transfer or otherwise dispose of the whole or any part of the Charged Property, other than as permitted under the Concession Agreement or with the prior written consent of the Secretary of State.

Restrictions on Repayment and Withdrawals

10.5 Notwithstanding any term express or implied pursuant to which any of the Deposit Moneys are or may be deposited in or paid to the credit of the Account, HS1 undertakes and agrees with the Secretary of State that it shall not be entitled to and shall not:

10.5.1 make any request or demand to the Secretary of State for the payment or repayment of all or any part of the Deposit Moneys;

10.5.2 withdraw all or any part of the Deposit Moneys; and/or

10.5.3 close the Account,

except in any case with the prior written consent of the Secretary of State or as expressly permitted under the Concession Agreement.

- 10.6 If, but for the application of Clause 10.5 above, any Deposit Moneys would be payable or repayable to HS1 at the expiry of any period of time under any term express or implied pursuant to which those Deposit Moneys were deposited in or paid to the credit of the Account, then HS1 undertakes and agrees with the Secretary of State that, notwithstanding any such term, the Deposit Moneys from time to time re-deposited (or successively re-deposited) in or paid to the credit of the Account, together with all interest from time to time accrued or accruing on all such moneys and all or any moneys payable or repayable pursuant to such re-deposits and in each case the debts represented thereby shall form part of the Charged Property and shall be subject to the terms of this Deed.

Authorisations

- 10.7 HS1 shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect, and supply certified copies to the Secretary of State of, any Authorisation required under any law or regulation of its jurisdiction of incorporation:

10.7.1 to enable it to perform its obligations under this Deed and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of this Deed; and

10.7.2 to enable it to preserve, maintain or renew any Charged Property.

Compliance with Laws and Regulations

- 10.8 HS1 shall comply in all respects with all laws and regulations to which it or any Charged Property may be subject, if failure so to comply would materially impair its ability to perform its obligations under this Deed.

Information and Notification

- 10.9 HS1 shall promptly supply to the Secretary of State such information as the Secretary of State may reasonably require about the Charged Property and its compliance with the terms of this Deed.

- 10.10 HS1 shall promptly on becoming aware of the same notify the Secretary of State in writing of any action, claim or demand made by or against it in respect of all or any part of the Charged Property or of any fact, matter or circumstance which is reasonably likely, with the passage of time, to give rise to such an action, claim or demand in respect of the Charged Property, together with HS1's proposals for settling, liquidating, compounding or contesting the same and shall, subject to the Secretary of State's approval of such proposals, implement them at its own expense.

Not Jeopardise Security

- 10.11 HS1 shall not do or cause or permit to be done anything which might in any way depreciate, jeopardise or otherwise prejudice the efficacy of the security constituted or intended to be constituted by this Deed.

11. Enforcement of Security

When Security becomes Enforceable

- 11.1 At any time after the occurrence of an Event of Default, the security constituted by this Deed shall become immediately enforceable and if an Event of Default is continuing unremedied or unwaived the Secretary of State may, without notice, in its absolute discretion enforce all or any

part of that security by appropriating, applying or transferring as the Secretary of State shall think fit all or any part of the Deposit Moneys at any time or times in or towards satisfaction of the Secured Liabilities in accordance with Clause 14.1 (*Order of Application*).

Financial Collateral

- 11.2 To the extent that any of the Charged Property constitutes "**financial collateral**" and this Deed and the obligations of HS1 under this Deed constitute a "**security financial collateral arrangement**" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No.2) Regulations 2003 (the "**Regulations**")), the Secretary of State shall have, in addition, the right, at any time after the security constituted by this Deed has become enforceable but only if an Event of Default is continuing unremedied or unwaived, to appropriate all or any part of such financial collateral in or towards satisfaction of the Secured Liabilities in accordance with Clause 14.1 (*Order of Application*). For this purpose, the parties agree that the value of such financial collateral shall be, in the case of cash, the amount standing to the credit of the Account or, if relevant, any other account, together with all interest accrued but unposted, at the time that the right of appropriation is exercised. The parties further agree that the manner of valuation provided for in this Clause 11.2 shall constitute a commercially reasonable manner of valuation for the purposes of the Regulations.

12. Extension and Variation of the LPA

Statutory Powers

- 12.1 The rights and powers of the Secretary of State contained in Clause 11 (*Enforcement of Security*) shall be in addition to and not to the prejudice of all or any of the powers, authorities and discretions conferred by the LPA (as varied or extended by this Deed) on mortgagees or otherwise conferred by law on mortgagees. For the purposes of all powers implied by the LPA, such powers shall arise (and the Secured Liabilities shall be deemed to have become due and payable for that purpose) on the date of this Deed and shall be immediately exercisable by the Secretary of State at any time after the security constituted by this Deed has become enforceable but only if an Event of Default is continuing unremedied or unwaived.

Restrictions

- 12.2 Section 103 of the LPA (restricting the power of sale) and Section 93 of the LPA (restricting the right of consolidation) shall not apply to the security constituted by this Deed.

13. Power of Attorney

Appointment and Powers

- 13.1 HS1, by way of security, irrevocably appoints the Secretary of State to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney (acting reasonably) may consider to be required or desirable for:
- 13.1.1 carrying out any obligation imposed on HS1 by this Deed; and
 - 13.1.2 enabling the Secretary of State to exercise, or delegate the exercise of, any of the rights, powers, authorities and discretions conferred on him by or pursuant to this Deed or by law (including the exercise of any right of an absolute legal or beneficial owner of the Charged Property).

Ratification

- 13.2 HS1 shall ratify and confirm whatever any attorney does or purports to do pursuant to its appointment under Clause 13.1 (*Appointment and Powers*).

14. Application of Proceeds

Order of Application

14.1 All moneys received or recovered by the Secretary of State pursuant to this Deed, after the security constituted by this Deed has become enforceable, shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the LPA) be applied in the following order (but without prejudice to the right of the Secretary of State to recover any shortfall from HS1):

14.1.1 in or towards payment of all Secured Liabilities or such part of them as is then due and payable to the Secretary of State in such order as the Secretary of State may select; and

14.1.2 in payment of the surplus (if any) to HS1 or other person entitled to it.

14.2 Clause 14.1 (*Order of Application*) will override any appropriation made by HS1.

15. No Liability

The Secretary of State shall not in any circumstances (either by reason of taking possession of any Charged Property or for any other reason and whether as mortgagee in possession or on any other basis) be liable to account to HS1 for anything, except actual receipts, or be liable to HS1 for any costs, charges, losses, liabilities or expenses arising from the realisation of any Charged Property or from any act, default or omission (other than gross negligence or wilful default) of the Secretary of State or any of its officers, agents or employees in relation to the Charged Property or from any exercise or purported exercise or non-exercise by the Secretary of State of any power, authority or discretion provided by or pursuant to this Deed or by law or for any other loss of any nature whatsoever (unless caused by the gross negligence or wilful default of the Secretary of State) in connection with the Charged Property (including, without limitation, any loss of interest caused by the determination before maturity of any Deposit Moneys or by the fluctuation in any exchange rate at which currency may be bought or sold by the Secretary of State).

16. Set-Off

Without prejudice to the rights conferred on the Secretary of State by Clause 11 (*Enforcement of Security*) and without limiting any other rights conferred on the Secretary of State by law or by any other agreements entered into with HS1, the Secretary of State may (but shall not be obliged to) set off any matured obligation due from HS1 under this Deed (to the extent beneficially owned by the Secretary of State) against any obligation (whether matured or not) owed by the Secretary of State to HS1, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Secretary of State may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If the obligation owed by the Secretary of State is unliquidated or unascertained, the Secretary of State may set off in an amount estimated by him in good faith to be the amount of that obligation.

17. Payments

Manner of Payments

17.1 HS1 shall make all payments required to be made by it to the Secretary of State under this Deed available to the Secretary of State (unless a contrary indication appears in this Deed) for value on the due date at the time and in such funds specified by the Secretary of State as being customary at the time for settlement of transactions in the relevant currency in the place of payment. Payment shall be made in the currency in which the relevant indebtedness is denominated or, if different, is expressed to be payable and to such account in the principal

financial centre of the country of that currency with such bank as the Secretary of State specifies.

No Set-off by HS1

- 17.2 All payments to be made by HS1 under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

Tax Gross-Up

- 17.3 HS1 shall make all payments to be made by it under this Deed without any deduction or withholding for or on account of Tax, unless such a deduction or withholding is required by law. HS1, promptly upon becoming aware that it must make such a deduction or withholding (or that there is any change in the rate or the basis of such a deduction or withholding), shall notify the Secretary of State accordingly.
- 17.4 If a deduction or withholding for or on account of Tax from a payment under this Deed is required by law to be made by HS1, the amount of the payment due from HS1 shall be increased to an amount which (after making any such deduction or withholding) leaves an amount equal to the payment which would have been due if no such deduction or withholding had been required.
- 17.5 If HS1 is required to make a deduction or withholding for or on account of Tax from a payment under this Deed, HS1 shall make that deduction or withholding and any payment required in connection with that deduction or withholding within the time allowed and in the minimum amount required by law. Within thirty days of making such a deduction or withholding or any payment required in connection with that deduction or withholding, HS1 shall deliver to the Secretary of State evidence reasonably satisfactory to the Secretary of State that the deduction or withholding has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- 17.6 A payment shall not be increased under Clause 17.4 above by reason of a deduction or withholding for or on account of Tax, if on the date on which the payment falls due:
- 17.6.1 the payment could have been made to the recipient without any such deduction or withholding if the recipient had been a Qualifying Recipient, but on that date the recipient is not or has ceased to be a Qualifying Recipient other than as a result of any change after the date in which it became a party to this Deed in (or in the interpretation, administration or application of) any law or Treaty or any published practice of any relevant taxing authority; or
- 17.6.2 the recipient is a Qualifying Recipient solely by virtue of paragraph [B] of the definition of Qualifying Recipient and:
- (a) an officer of HM Revenue & Customs has given (and not revoked) a direction under s931 ITA which relates to the payment and the recipient has received from HS1 a certified copy of that direction; and
- (b) the payment could have been made to the recipient without any deduction or withholding for or on account of Tax if that direction had not been made; or
- 17.6.3 the recipient is a Qualifying Recipient solely by virtue of paragraph [B] of the definition of Qualifying Recipient and:
- (a) the recipient has not given a Tax Confirmation to HS1; and
- (b) the payment could have been made to the recipient without any deduction or withholding for or on account of Tax if the recipient had given a Tax

Confirmation to HS1, on the basis that the Tax Confirmation would have enabled HS1 to have formed a reasonable belief that the payment was an 'excepted payment' for the purposes of s930 ITA; or

17.6.4 (the recipient is a Treaty Recipient and HS1 is able to demonstrate that the payment could have been made to the recipient without deduction or withholding for or on account of Tax had the recipient complied with its obligations under Clause 17.7 below.

17.7 A Treaty Recipient and HS1 shall co-operate in completing any procedural formalities necessary for HS1 to obtain authorisation to make a payment or payments to that recipient without a deduction or withholding for or on account of Tax.

17.8 If HS1 makes an increased payment under Clause 17.4 above and the recipient of that payment determines that:

17.8.1 a Tax Credit is attributable to that increased payment; and

17.8.2 the recipient has obtained, utilised and retained that Tax Credit,

the recipient shall pay an amount to HS1 which the recipient determines will leave it (after that payment) in the same after-Tax position as it would have been in had the increased payment not been required to be made by HS1.

18. Certificates and Determinations

Any certificate or determination by the Secretary of State of a rate or an amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

19. Partial Invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired and, if any part of the security constituted, or intended to be constituted, by this Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

20. Remedies and Waivers

20.1 No failure to exercise, nor any delay in exercising, on the part of the Secretary of State any right, remedy or power under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right, remedy or power prevent any further or other exercise or the exercise of any other right, remedy or power. The rights, remedies and powers provided in this Deed are cumulative and not exclusive of any rights, remedies or powers provided by law.

20.2 Any amendment, waiver or consent by the Secretary of State under this Deed must be in writing and may be given subject to any conditions thought fit by the Secretary of State. Any waiver or consent shall be effective only in the instance and for the purpose for which it is given.

21. Notices

21.1 Details

All notices under this Deed shall be in writing and all certificates, notices or written instructions to be given under the terms of this Deed shall be served by sending the same by first class pre-paid post or leaving the same at:

If to the Secretary of State - Rail Executive – Passenger Services
Great Minster House,
33 Horseferry Road,
London SW1P 4DR

For the attention of - HS1 Concession Manager

If to HS1 - 5th Floor, Kings Place, 90 York Way, London, N1 9AG

For the attention of - Chief Executive

21.2 Receipt of Notices

Either party to this Deed may change his or its (as the case may be) nominated address by prior notice to the other party. Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five Business Days after mailing.

English Language

21.3 Any notice or communication given or made under or in connection with this Deed must be in English.

21.4 All other documents provided under or in connection with this Deed must be:

21.4.1 in English; or

21.4.2 if not in English, and if so required by the Secretary of State, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

22. Counterparts

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed. Delivery of an electronic counterpart of this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

23. Assignment

The Secretary of State may assign, charge or transfer all or any of its rights under this Deed without the consent of HS1 to any person to whom it assigns, charges or transfers its rights under the Concession Agreement. The Secretary of State may disclose any information about HS1 and this Deed as the Secretary of State shall consider appropriate to any actual or proposed direct or indirect successor or to any person to whom information is required to be disclosed by any applicable law or regulation.

24. Releases

Upon the expiry of the Liability Period (but not otherwise) and subject to Clauses 6.3 and 6.4 (*Reinstatement*), the Secretary of State shall, at the request and cost of HS1, take whatever action is necessary to release the Charged Property from the security constituted by this Deed.

25. Governing Law

25.1 This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

26. Enforcement

Jurisdiction

26.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").

26.2 HS1 agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary or take proceedings relating to a Dispute in any other courts.

26.3 Clauses 26.1 and 26.2 above are for the benefit of the Secretary of State only. As a result, the Secretary of State shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secretary of State may take concurrent proceedings in any number of jurisdictions.

IN WITNESS of which this Deed has been entered into as a deed and is intended to be and is delivered on the day and year first before written.

EXECUTION PAGE

HS1 LIMITED

EXECUTED AS A DEED by)
HS1 LIMITED)
acting by:)

.....
Director

.....
Director/Secretary

THE SECRETARY OF STATE

The Corporate Seal of the)
SECRETARY OF STATE FOR)
TRANSPORT)
hereunto affixed is)
authenticated by)

.....
Authorised by the Secretary of State
for Transport

Schedule 11

Memorandum of Understanding

Schedule 11

Memorandum of Understanding

Memorandum of Understanding between the Secretary of State and the Office of Rail and Road ("ORR") concerning the ORR's responsibilities in relation to the concession agreement (the "HS1 Concession Agreement") dated 14 August 2009 (as amended and restated) between the Secretary of State and HS1 Limited ("HS1 Co") regarding the rail link between London St Pancras Station in the London Borough of Camden and Cheriton in Kent now known as High Speed 1.

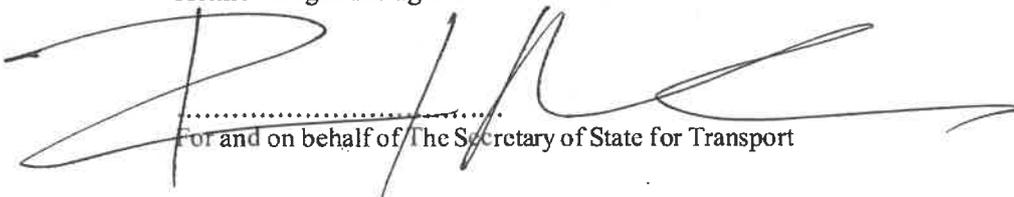
1. In this memorandum:
 - 1.1 terms which are defined in the HS1 Concession Agreement shall, unless the context otherwise requires, have the same definition in this memorandum; and
 - 1.2 a reference to the HS1 Concession Agreement shall include a reference to that Agreement as amended or supplemented from time to time.
2. Under Regulation 15(8) of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 the ORR has been given responsibility through the rights and functions conferred on it under or by virtue of the HS1 Concession Agreement to ensure that the requirements set out in Regulation 15(7) are implemented. It is acknowledged and agreed that these functions and rights are set out in Clause 4.2 of the HS1 Concession Agreement in relation to the Clauses and Schedules in the HS1 Concession Agreement and ORR has no other responsibilities under the HS1 Concession Agreement.
3. The ORR shall upon request by the Secretary of State, and without prejudice to the ORR's rights under paragraph 5.4 of Schedule 8 of the HS1 Concession Agreement, provide the Secretary of State:
 - 3.1 with all the information, assistance and advice that the Secretary of State reasonably requires in order to decide whether, it is necessary or desirable for the Secretary of State to take the action provided in paragraph 2.6 of Schedule 3 [Minimum Operational Standards] to the HS1 Concession Agreement; or
 - 3.2 in the event that HS1 Co challenges a Final Decision, a Provisional Order or Final Order under paragraph 5.1 of Schedule 8 [Decision Making and Enforcement Procedure], with all the information, assistance and advice that the Secretary of State reasonably requires in order that he may respond to that challenge and in relation to any court or other proceedings in connection with such challenge; and
 - 3.3 in the event that HS1 Co fails or refuses to comply with a Final Order or Provisional Order under the Enforcement Procedure and the Secretary of State wishes to bring proceedings to enforce such Provisional Order or Final Order in accordance with paragraph 5.3 of Schedule 8 [Decision Making and Enforcement Procedure], with all the information, assistance and advice that the Secretary of State reasonably requires for the purposes of any court proceedings taken in connection therewith.
- 3.4 The ORR shall use its reasonable endeavours to recover from HS1 Co any amount payable by HS1 Co, as a rail link undertaker for the purposes of Section 21A of the CTRL Act 1996, under that Section, save in respect of amounts in respect of which clause

4.4.2 of the Concession Agreement applies. The ORR shall invoice the Secretary of State for such amounts quarterly in arrears, and the Secretary of State shall pay to the ORR all such amounts as are reasonably incurred by ORR in accordance with clause 4.4.2.

- 3.5 If for any reason HS1 Co does not pay any amount payable by it under Section 21A within three months of the date on which that sum was due:
- 3.5.1 the Secretary of State shall promptly, and in any event within 30 Business Days of the expiry of such three month period, pay such amount to the ORR; and
 - 3.5.2 for the avoidance of doubt, payment of these monies by the Secretary of State shall not discharge HS1 Co from any amount owing to the ORR by HS1 Co; and
 - 3.5.3 the ORR shall use its reasonable endeavours to recover any monies owing to the ORR by HS1 Co including bringing civil proceedings in accordance with Section 21A(5) of the CTRL Act 1996.
- 3.6 If and to the extent that the ORR recovers any amount payable to the ORR by HS1 Co in accordance with Section 21A of the CTRL Act 1996 that has previously been paid by the Secretary of State in accordance with paragraph 3.5.1 above, the ORR shall repay such amount to the Secretary of State within 30 Business Days of receiving such amount. Any reasonable costs incurred by the ORR in complying with paragraphs 3.4 and 3.5.3 above shall be reimbursed to the ORR by the Secretary of State if and to the extent that such costs are not recoverable from HS1 Co.
- 3.7 Without prejudice to the obligations of the ORR in accordance with paragraph 3.5.3 above, the Secretary of State may take such steps (whether by exercising his rights of subrogation or otherwise) as he may consider appropriate to recover any amounts paid by him to the ORR pursuant to paragraph 3.5.1. The ORR shall provide the Secretary of State with all such assistance and information as the Secretary of State may reasonably require for that purpose.
- 3.8 Without prejudice to paragraph 3.5, the Secretary of State agrees to indemnify ORR for any other expense it may incur or loss it may suffer by virtue of ORR's performance of its functions under Regulation 15(8) and the HS1 Concession Agreement if and to the extent that this is not recoverable under Section 21A of the CTRL Act 1996 or through any costs orders made in any proceedings to which the ORR and HS1 Co are parties.
4. No other person has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this memorandum.

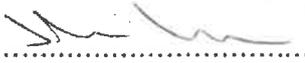
A copy of this memorandum has been provided to HS1 Co.

Acknowledged and agreed:



.....
For and on behalf of The Secretary of State for Transport

Acknowledged and agreed:

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke.

.....
For and on behalf of the Office of Rail and Road