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22 March 2022

Company Secretary  
Network Rail  
1 Eversholt St  
London  
NW1 2DN

## **Network licence condition 16 (Financial ring-fence): Rail and Logistics Supply Collaboration with HS2 Limited**

### **Decision**

1. On 3 February 2022, Network Rail applied for consent, under Condition 16.1(c) of its network licence, proposing to enter into an agreement with HS2 Limited (“HS2”) for the combined procurement, material handling and logistics of Long Welded Rail (“LWR”) for each of their networks. The details of the proposal are attached at Annex 1.
2. We have considered the information supplied by Network Rail and, under condition 16.1(c) of its network licence, the Office of Rail and Road (“ORR”) consents to the proposals as set out by Network Rail in its letter of 3 February 2022 (“the application”).

### **Reasons for decision**

3. The purpose of the financial ring-fence licence condition is to restrict Network Rail’s ability to divert its resources, or to allow them to be diverted to activities that are not Permitted Business<sup>1</sup>. Network Rail must gain our consent if it wishes to resource any activity that is not Permitted Business, unless the level of resource is sufficiently low that it can be considered a *De Minimis* activity, as defined in Condition 16.3-16.6.
4. Network Rail’s collaborative activity with HS2 would not be wholly for Network Rail’s Permitted Business, as defined in Part 2 of the network licence, so it has sought to secure ORR consent for the activity rather than have the procurement considered as a *De Minimis* activity.
5. In considering the request we have, in accordance with our usual procedures for processing financial ring-fence consent requests, borne in mind three overarching factors. These are:
  - (a) whether the proposal would be likely to affect the operation of the railway;

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<sup>1</sup> As defined in Part 2 of Network Rail’s network licence.

- (b) whether there are any competition issues arising, or whether the proposal might bring any state subsidy issues for the Government; and
- (c) any financial risks arising from the proposal.

#### *Operation of Network Rail's network*

6. We have no concerns with respect to paragraph 5(a). Network Rail already procures rail for its own network and has its processes in place for so doing. Network Rail is proposing, in effect, to extend its procurement activities so that it also procures LWR in collaboration with HS2. We also note the statements made by Network Rail in section 4 of the application with regard to its assessment of rail demand, manufacturing capacity and supply, quality assurance and Network Rail's own stockholding, and that it has not identified any supply concerns. Network Rail has also described how local stockholding facilities for HS2 should help keep rail available for the construction of the high-speed railway.

#### *State subsidy and competition*

7. We have no concerns to pursue under paragraph 5(b). We note that the proposal is not for a 'start up' commercial business that would supply goods or services into a market. Given the proposed activity is not a commercial venture, we consider the risk of raising state subsidy issues to be low. If DfT were to consider such an issue could arise, it would be in a position to liaise with each in accordance with the separate framework agreements between DfT and HS2/Network Rail respectively.

8. With regard to competition, there can be circumstances in which agreements to purchase jointly can raise competition concerns, in particular where they may give rise to high levels of concentration. On the basis of the information we have received from Network Rail, we do not see that the proposed arrangement brings a significant risk to competition. For the avoidance of doubt, this view can only be preliminary and it will not preclude our ability to revisit this issue subsequently, nor fetter our ability to use our competition powers, if needed.

#### *Financial impacts and potential liabilities on Network Rail*

9. We have no concerns to pursue under paragraph 5(c). We note that for Network Rail, the joint procurement is based on 'business as usual' processes, there will be no Network Rail investment at risk, and payments from HS2 to Network Rail are to be set out formally in a binding agreement between the two parties. Network Rail has stated that this will include the terms of cost sharing and payment by HS2 to Network Rail. A key principle is that all incremental costs and liabilities incurred by Network Rail as a result of the joint procurement will be borne by HS2. We also note that the financial arrangements are essentially between one government-owned organisation and another.

10. The arrangement will help offset Network Rail's fixed costs and potentially secure additional economies of scale. Based on imminent tender activity and ongoing market conditions, Network Rail has estimated that the arrangement could

lead to a financial/efficiency gain of up to £ [Redacted] over the next control period. HS2 will share a percentage of the economy of scale benefit (based on their percentage of total volume), with other logistical and financial benefits being realised e.g. through the use of Network Rail's trains, as HS2 does not have its own fleet of trains.

11. In reaching our decision we have given particular weight to our duty to exercise our functions in a manner which we consider best calculated to *“protect the interests of users of railway services”*.

12. This consent is valid from this day until 31 March 2029, or such longer period as ORR may specify in a notice given in writing to Network Rail.

13. ORR may modify or revoke this consent at any time on reasonable notice given in writing to Network Rail if it appears to ORR requisite or expedient to do so having regard to the duties imposed on ORR by section 4 of the Railways Act.

A handwritten signature in blue ink that reads 'Les Waters'.

**Les Waters**

**Duly authorised by the Office of Rail and Road**

## Annex 1

C/O Les Waters, Senior Manager, Licensing  
Office of Rail and Road  
25 Cabot Square  
London, E14 4QZ

Network Rail Infrastructure Limited  
Planning & Regulatory Team  
The Quadrant  
Elder Gate, Milton Keynes  
MK9 1EN

**By email only**

Our reference: NR-HS2 LWR

3 February 2022

Dear Les,

### **Application for Regulatory Consent: Network Rail and High Speed 2 Rail and Logistics Supply Collaboration**

#### **1. Summary**

Network Rail Infrastructure Limited (“**Network Rail**”) and HS2 Limited (“**HS2**”) are seeking to work collaboratively for the benefit of the Great British railway industry in relation to the combined procurement, material handling and logistics of Long Welded Rail (“**LWR**”) for each of their railways.

This is intended to involve:

1. a Network Rail-led procurement for LWR supplies and associated LWR logistics for the Network Rail railway network plus HS2’s requirements for the new high-speed railway under construction, including Phase 1 linking London and the West Midlands and Phase 2a linking the West Midlands and the North via Crewe; and
2. an agreement between Network Rail and HS2 to coordinate the placing of orders for LWR and the management of delivery, stockholding and logistics, so that both Network Rail and HS2 can be assured of availability of LWR as required (to be known as the Collaboration and Management Agreement (“**CMA**”). Please note that we are advised that the key principles of the CMA have been agreed and the CMA is being worked drafted by Network Rail’s and HS2’s solicitors, who continue to refine and draft accordingly to embody and reflect the agreed principles.

Wherever practicable, existing, and established Network Rail processes will be utilised. A broad agreement at working level has been reached between Network Rail and HS2 Ltd in respect of:

- i. the key principles for the procurement by Network Rail of LWR and the associated logistics services for HS2; and
- ii. the onward supply of such LWR and associated logistics by Network Rail to HS2.

The procurement and services will cover the following distinct areas as part of the arrangements:

1. procurement of Long Welded Rail (LWR);
2. procurement of assets - Rail Delivery Trains;
3. procurement/use of assets - Haulage rolling stock;
4. procurement of haulage and rolling stock services; and
5. logistics services and management for onward supply of LWR (internal services).

## **2. Background**

In 2020, HS2 undertook a procurement review considering the optimal model for its LWR supply and delivery requirements. HS2 concluded that utilisation of Network Rail's existing supply and delivery system including established expertise, experience and processes represents their optimal solution. This was deemed to offer best value for money by preventing duplication of resources. In parallel, Network Rail undertook analysis that indicated synergy would mitigate the potential impact of HS2 competing separately for LWR including impact on costs and or assurance of supply.

At an operational level, both organisations recognising that each are arm's length bodies (ALBs) of the Department for Transport ("DfT"), engaged and agreed that a collaborative approach to LWR procurement and delivery is deemed to be mutually beneficial to assure supply for both organisations, exploit savings and seek to prevent price escalation. Subsequent discussions have evolved concluding that Network Rail will lead a procurement for LWR supplies and associated logistics for both organisations and subsequently co-ordinate and manage delivery logistics.

A collaborative approach will be adopted, utilising wherever practicable, existing Network Rail processes. Given the scale of HS2's LWR requirements Network Rail anticipates integrating HS2's LWR requirements into its existing demand model by treating HS2's LWR requirements as an additional Network Rail region i.e., Network Rail's 'Sixth Region'.

The primary commercial principle to be enshrined in the CMA is that HS2 shall not hold Network Rail liable in the event of breach or failure. Non-commercially binding performance monitoring metrics are to be utilised to assure the delivery of both organisations' obligations and to encourage ongoing collaborative working relationships. The performance metrics will be measured and monitored during the length of the agreement with a clear escalation process in both organisations. The final say on any matter that cannot be resolved will rest with the Secretary of State for Transport.

Under the proposed contracting model in the CMA the Supply Agreement will be contracted direct between Network Rail and the supply chain and HS2 will have the benefit of third-party rights and collateral warranties as a means of practical recourse against the manufacturer.

Senior stakeholders in both organisations have engaged in the proposal and agree this is the most appropriate way forward for the industry. Given the proximity and interface of existing Network Rail North West & Central (NW&C) Region railway infrastructure to the new high-speed railway infrastructure HS2 is constructing, engagement internally has been driven by NW&C Region (the NW&C Route Managing Director) and Route Services (the Managing Director of Network Rail Route Services) with the Delivery Director, Systems and Stations at HS2.

## **3. Internal governance and clearance**

A jointly developed Heads of Terms was finalised in September 2021. This non-binding document was endorsed within Network Rail by:

1. Director, Supply Chain Operations;
2. Finance Director, NW&C Region; and

### 3. Head of Commercial Commitments.

NR Legal was consulted in relation to formulating the Heads of Terms.

The approach was presented at Network Rail's Commercial and Procurement Executive Panel ("CPPEP") on 6<sup>th</sup> October 2021 for noting. Subsequently, the strategy and principles were endorsed by HS2's Commercial and Investment Panel ("CIP") on 1<sup>st</sup> November 2021. The jointly developed Heads of Terms were agreed at HS2 CIP by:

4. Delivery Director, Systems and Stations;
5. Rolling Stock and Systems Commercial Delivery Director;
6. Head of Delivery Project Track and IMD; and
7. Senior Legal Counsel.

The requirements and obligations of both parties are currently being defined within a binding Collaboration and Management Agreement ("CMA"). This will be subject to Network Rail CPPEP and Executive Leadership Team approval in early 2022.

HS2 has received authority to enter into agreements at CIP in November 2021 and provided the Delivery Director, Systems and Stations, with delegated authority to enter into the CMA. Final endorsement will be given to ensure the principles have been met and budget maintained within HS2 at a further CIP panel in early 2022 alongside the Network Rail governance process.

### ***4. Effects on the Network Rail operational railway***

A primary objective of the collaboration is to assure supply of rail to both organisations and manage availability of LWR resources accordingly. Network Rail has analysed manufacturing capacity against anticipated demand and has determined if peak demand periods are proactively managed through adequate stockholding where necessary, no negative LWR supply concerns have been identified.

Rail supply as a commodity to Network Rail will continue to be governed by the requirements of the applicable British standard implementations of English language versions of European standards (BS EN Standards). These standards outline rigorous quality controls with tender requirement specifications enhancing the expectations on supply chain quality assurance. Network Rail will continue to conduct risk-based supplier quality assurance audits with increased frequency of rail manufacturer surveillance with the increase in throughput.

In relation to LWR logistics, all of Network Rail's worksite LWR deliveries are undertaken by specialist Rail Delivery Train wagons which have built-in offloading capability, due to the transient nature of worksites. There are some constraints on this resource currently. Approximately 80% of HS2's LWR requirements however will be delivered to fixed nodal points where offloading infrastructure exists, enabling more readily available carrier wagons to be utilised for HS2 LWR. A material impact on the delivery of Network Rail LWR to Network Rail worksites is not therefore anticipated. Further, Network Rail is embarking on a programme to replace the current fleet of Rail Delivery Train wagons and will retain the incumbent fleet for the initial CMA period of HS2 LWR deliveries as a contingency measure.

Within the CMA, there is drafting presently that enables Network Rail to prioritise deliveries to respond to infrastructure emergencies occurring within Network Rail's existing regions. It is anticipated that the utilisation of local stockholding facilities at HS2 fixed nodal points will mitigate the significant majority of any potential HS2 installation delay should Network Rail need to supply an infrastructure emergency on the Network Rail network.

## **5. Effects on the wider railway industry**

The benefits of the proposal to be delivered include:

1. assured LWR supply for both organisations;
2. exploitation of the benefit of economies of scale, particularly for HS2;
3. HS2 access to and utilisation of Network Rail's pre-existing rail supply infrastructure and expertise;
4. collaboration to drive innovation across the market, particularly in carbon reduction; and
5. single interface and tender activities for supply chain partners.

Potential impacts and risks to the wider industry are considered minimal. Open, transparent, and fair procurement activities will be undertaken for the activities anticipated.

## **6. Business Planning**

Several potential operating models were considered which included:

1. a full procurement and delivery solution to be led by Network Rail where Network Rail and HS2 shared risk;
2. a full procurement and delivery solution to be led by Network Rail where Network Rail held no risk;
3. Network Rail provision of internal logistics only, with HS2 contracting direct with a rail supplier; and
4. Network Rail provision of internal co-ordination services only, with HS2 contracting direct with a rail supplier and logistics supplier(s).

Option 1 was discounted with Network Rail holding neither the appetite nor regulatory capability to take risk on behalf of HS2. Supply chain interdependencies and the loss of assurance of supply/economy of scale benefit to Network Rail led to both Option 3 and Option 4 being discounted. Option 2 was felt to best fulfil aspirations of simplicity, collaboration and dual benefit.

HS2 has provided visibility to Network Rail of its LWR requirements throughout the delivery of Phase 1 and Phase 2a of the HS2 project. Network Rail anticipates this will generate an additional ~15% of demand on the LWR supply chain in the period from February 2025 to December 2027. Both manufacturing and wagon capacity has been internally reviewed by Network Rail at a month-by-month level to assure that there is sufficient capacity available. The additional volume requirements will be made clear in all procurement activities to assure externally, and if not, offer the supply chain sufficient lead time to mobilise increased capacity.

## **7. Investment criteria**

Network Rail shall utilise its existing resources to support the delivery of the required procurement activities and ongoing management of supply chain contracts. Any costs Network Rail incurs which are for the collaboration, for example the acquisition of additional labour and or asset investment required to support the collaboration, shall be met by HS2. Network Rail and HS2 shall not share responsibility for costs that either party would have incurred in any event e.g., legal costs in connection with the standard elements of the LWR procurement.

A core principle of the collaboration is that Network Rail shall not incur risk on behalf of HS2. Network Rail shall be obliged to use reasonable endeavours to seek remedies from the supply chain in the event of supplier failure but Network Rail shall not be ultimately liable to HS2. The commercial

model to be utilised between both organisations shall result in HS2 paying actual costs-to-serve. In addition, the contracting model includes third party rights and collateral warranties for HS2 to enable their direct recourse against the manufacturer.

Further, the CMA will contain penalties for any HS2 failure to pay, including interest charges escalating to termination. To ensure that HS2 cannot build up a backlog of unpaid orders (even though it is an unlikely remedy as both organisations are ALBs), the CMA will provide for escalation dependent upon the level of monies outstanding. Detailed below is the escalation value and escalation levels with the Secretary of State for Transport having final say on any payment dispute.

4 weeks	project	sponsor	executive
8 weeks	sponsor	sponsor	executive
12 weeks	executive	executive	executive

Where procurement is required, all current procurement practices shall be utilised to assure value for money and legal compliance.

### 8. Financial Risks

As above, all incremental costs and liabilities incurred by Network Rail as a result of LWR supply to HS2 from this collaboration shall be borne by HS2. Should any supply be defective, HS2 will have direct recourse to the manufacturer under the third-party rights and collateral warranties anticipated in the CMA. The table below summarises the key financial risks and mitigations:

Risk	Impact	Mitigation
Internal or external costs change through the agreement.	Network Rail is exposed to adverse market impacts	Annual reconciliation of actual costs incurred with outstanding sums to be billed to HS2. The costs of the steel will be agreed between the parties on an annual basis on 30 <sup>th</sup> July each year for the following year.
HS2 fail to fulfil committed demand volumes.	Network Rail is exposed to supply chain remedies.	Option for HS2 to make an annual commitment to either support assurance of supply or realise efficiencies. If supply chain commitments are made, HS2 will be obligated to pay any associated supply chain remedies for failure to fulfil.
Incorrect Value-Added Tax (“VAT”) declarations.	Network Rail is liable for HS2 associated VAT.	Network Rail will pay suppliers for VAT and charge HS2 VAT. HS2 will pay Network Rail and recover under public authority recovery scheme.
HS2 activities at nodal points damage Network Rail delivery assets.	Network Rail is responsible for rectification cost.	The liability will be with HS2 to ensure it is in position to recover from its contractor.
HS2 do not pay Network Rail in line with agreements.	Network Rail incur costs for goods, services or interest and do not recover.	Provisions within CMA to charge interest for late payment, escalating to termination of the agreement. Both parties under the common ultimate decisive influence of the Secretary of State for Transport.

		The CMA will include a value-based escalation process for unpaid orders as covered in section 7 above. In addition, the CMA will include a termination clause should either party no longer maintain ALB status.
Internal or external failure leading to consequential loss.	HS2 seeks to assert Network Rail is liable for damage to HS2 infrastructure or for HS2 programme delays.	Fundamental principle of agreement is that Network Rail hold no liability for either internal or external failures nor consequential loss. HS2 assume all liability associated with the arrangement. Supply chain failure is covered by the contracting model and there will be a CMA clause requiring joint communications and publicity for the duration of the Agreement.
Network Rail are required to increase inventory levels to assure supply.	Increased liability and cost of borrowing.	Inventory increases to be held at nodal points, with liability transferred to HS2 at point of unloading. This is a key risk management strategy for HS2 to ensure maintaining the delivery programme.
No provision in commercial model for recovering depreciation of capital assets.	Network Rail is forced to accelerate replacement of capital assets due to utilisation for HS2 requirements.	Utilisation of Network Rail's capital assets for HS2 requirements is deemed to be insignificant in the design life of the impacted assets.

Following completion of the CMA, Network Rail and HS2 shall hold joint monthly risk reviews to manage and mitigate identified and emerging risks.

### **9. Legal considerations**

External legal advice has been sought from Dentons UK and Middle East LLP on the proposed arrangements and operating model. That advice in relation to Procurement Law, Competition Law and Subsidy Control in connection with the LWR procurement is summarised in the following sub paragraphs. Network Rail is working to establish if the following positions vary in relation to connected procurements listed in section 1 above. At this stage, the intended approach overall is viewed as not generating significant legal risk.

#### **a) Procurement Law**

A procurement model which involves one contracting authority putting in place contracts for its own supply and the supply of other precisely identified contracting authorities is lawful. Provided the required procurement is correctly conducted, as mandatory regardless of the HS2 elements, no risks are foreseen. Regardless, there are good arguments for Network Rail and HS2 to be considered as a single undertaking in the context of the procurement activities, with both parties under the common ultimate decisive influence of the Secretary of State for Transport.

## b) Competition Law

The following summary in relation to Competition Law is conveyed by question-and-answer format, derived from competition legal advice provided by Dentons UK and Middle East LLP on the proposed LWR arrangements and operating model.

**Q. In the market for rail steel in the UK, Network Rail and HS2 (albeit when requirement volumes are compared, HS2's requirement is materially smaller than NR's requirement) together will likely have the largest LWR demand and therefore significant buying power. Could Network Rail and HS2 seek to drive the price of the product down and thus impact negatively on quality?**

The competition law advice received is based on the view that there are good arguments that HS2 should not be regarded as an undertaking (see the second question below for the basis for this view), so any procurement arrangement between Network Rail and HS2 falls outside of the application of competition law.

However, Network Rail does act as an undertaking in the downstream market for the operation and provision of access to national rail network infrastructure in Great Britain and it is possible that the use of the purchased product could be regarded as being related to that economic activity. Therefore, to the extent that Network Rail's purchases, on its own and HS2's behalf, represent a significant proportion of the demand for the product, any competition law implications will depend on the following factors:

- the product/geographic scope of the relevant economic market on which the purchases are made (whether that geographic market for the purchase of long rail is wider than the UK – noting that all potential suppliers bar one, including suppliers who have supplied Network Rail in the past, are based outside the UK);
- Network Rail's share of that purchase market; and
- if Network Rail has a dominant share of the purchase market, whether the purchasing activity could be regarded as an abuse of dominance.

Even if it was established that Network Rail was a dominant purchaser in relation to this product, that is not prohibited by competition law. An abuse of dominance would also need to be established, which might be the case if, for example, Network Rail was exploiting that position to purchase at excessively low prices or otherwise imposing unfair terms or exclusivity. It might even be the case that a tender run unfairly could be regarded as an abuse of dominance. However, there is nothing in the current proposals which suggests that abuse of dominance by Network Rail is a concern. A competitive procurement process will establish a market price, has the ability to maintain quality standards and will ensure no discrimination between suppliers.

**Q. Network Rail and HS2 are working together to procure rail, arguably both entities are in competition for the same product (acknowledging that both entities are ultimately owned at present by the Secretary of State for Transport)?**

There are good arguments that HS2 is not an undertaking for the purposes of competition law, therefore, HS2 and Network Rail would not be regarded as competing undertakings in the purchase market. HS2 would appear to be an entity which is currently engaged in a core state activity of constructing transport infrastructure (i.e., building a railway), and it is not currently offering services to anyone or purchasing goods in relation to an economic activity. If the nature of HS2's activities were to change, this assessment would need to be reviewed.

Even if that argument failed, there appear to be good arguments that Network Rail and HS2 are likely to be considered as a single undertaking in the context of long rail procurement. This would mean that competition law does not apply to any agreement between the parties in relation to procurement of the product and will not prevent (or limit) the parties in entering the proposed arrangement. This is because the prohibitions contained within Chapter 1 of the Competition Act 1998 only apply to arrangements "between undertakings" and if Network Rail is the same undertaking as HS2, it cannot have an agreement with itself. The fact that each is a distinct legal entity does not affect this analysis.

There is some support for this position in cases dealing with the liability of a parent for the activities of its subsidiaries and the assessment of State-owned Enterprises. Here, each of Network Rail and HS2 are under the common ultimate decisive influence of the Secretary of State for Transport and could be regarded as a single undertaking on that basis. Again, if HS2's status or activities changes, this assessment would need to be reviewed.

Therefore, to the extent that Network Rail and HS2 can be regarded as a single undertaking, competition law implications are limited to those under Chapter 2 of the Competition Act 1998, which prohibit an abuse of dominance without objective justification. In this respect, the same considerations as are set out above in relation to the first question would apply.

In addition, the CMA will include a termination clause should either party no longer maintain ALB status.

#### c) **Subsidy control**

Regarding subsidy, a subsidy arises only to the extent an advantage is provided to an "enterprise"/"economic actor" offering goods and/or services on a market. The arguments available in relation to HS2's status as an undertaking under competition law are therefore also relevant to whether it would be considered as an enterprise/economic actor under the UK subsidy control regime. As a result, the risk that the arrangement could be challenged on the basis that Network Rail is providing a subsidy to HS2 is low.

Even if HS2 could be regarded as an enterprise/economic actor, which is unlikely, there would also be an argument that a supply arrangement of the type proposed, which will be on commercial terms as regards the provision of procurement and logistics management services by Network Rail is one which would satisfy the market economy operator test, as it is open to a purchaser of steel to collaborate with another entity to obtain better purchasing terms (within the parameters of joint purchasing permitted by competition law).

### **10. Proposed regulatory treatment**

There are two outcomes to this transaction that are fused by the overall collaboration anticipated:

- a. the first in relation to the supply of long weld rail (LWR) to the operational Network Rail railway business falling within Network Rail's core Network Management Duty and thus constituting Permitted Business (both as defined by the Network Rail Network Licence, Licence Condition 1.1, and the definition of Permitted Business); and
- b. the second in relation to the acquisition and supply of LWR by Network Rail via its established LWR welding and distribution network to HS2, that we believe does not fall within the definition of Permitted Business and necessitates a consent pursuant to Licence Condition 16.1(c) of the Network Rail Network Licence.

In the circumstances of this matter, Network Rail has assessed that it is not appropriate to proceed with this transaction as de minimis business. There are several key considerations that have influenced this determination by Network Rail, including:

- i. the criticality of securing continuity in supply of LWR to the operational Network Rail railway business;
- ii. the fluidity in emerging details as to the potential future railway regulatory environment with the anticipated transition to a revised national rail industry framework guided by GBR; and
- iii. the requirement, so far as it is reasonably practicable in the context of the foregoing, to proceed with assurance as to the regulatory footing once the transaction is initiated (in this context we believe the potential operation of Licence Condition 16.6 of the Network Rail Network Licence (however unlikely) would not provide sufficient assurance to the parties involved including the Cabinet Office and the DfT).

Network Rail seeks a consent pursuant to Network Rail Network Licence condition 16.1(c) to enable Network Rail, working in a collaboration with HS2, to enter:

1. into a Network Rail-led procurement for LWR supplies and connected associated procurements e.g. LWR logistics including HS2 Ltd requirements for Phase 1 and Phase 2a of High Speed Two railway project; and
2. an agreement between both organisations to coordinate the placing of orders for LWR and the management of delivery, stockholding, and logistics so that both Network Rail and HS2 Ltd can be assured of availability of LWR as required.

The contract for LWR between Network Rail and the suppliers identified by the procurement exercises and the CMA will facilitate the provision of third-party rights and collateral warranties in favour of HS2 Ltd.

In connection with the supply of LWR procurement exercise Network Rail has sought the DfT's direction. In this instance, the DfT (acting by (i) the Head of Rail Freight Strategy & Rail Leadership, International Rail & Rail Freight and (ii) Finance and Assurance Policy Advisor, Shareholder and Corporate Sponsorship Directorate, Corporate Delivery Group (CDG)) has confirmed that Network Rail is not required to obtain approval from the DfT as the Cabinet Office will undertake the necessary assurance. Compliance with the following is required:

- a. government steel procurement guidance (reference PPN 11/16) plus other Procurement Policy Notes as relevant e.g. carbon reduction plans etc.; and
- b. applicable Cabinet Office spend controls

In relation to the latter element, the project team and Network Rail's Head of Procurement Operations, Route Services, met with members of the Cabinet Office on 18 November 2021. At that meeting it was determined the project will report at Outline and Full Business Case stages and established monthly checkpoints with the Cabinet Office from February 2022 to July 2022.

The CMA is continuing to be drafted but as above we are advised the overarching principles to be contained in that document have been agreed. Therefore, Network Rail believes this letter should provide the ORR with sufficient information in order that consent can be granted under Licence Condition 16.1(c) of the Network Rail Network Licence. Given the intention of Network Rail and HS2

to enter into the collaboration agreement in May 2022, Network Rail is seeking to secure the requisite consent in March 2022.

The timeframe for the anticipated grant of consent has been devised to ensure it is in place for the development of the Invitation to Tender documentation (ITT) and prior to the signing of the CMA. Network Rail is seeking consent to remain in place for the duration of the CMA, March 2022 to December 2027, or as amended and agreed by Network Rail and HS2 (and approved by ORR) or until it is otherwise terminated.

### **11. Timescales**

Activity	Timescale
Develop PQQ and ITT Documentation	March 2022 – June 2022
Agreement of CMA	April 2022
CMA Signatory	May 2022
Pre-Qualification Questionnaire Period	July 2022 – Oct 2022
Run ITT	November 2022 – Feb 2023
ITT Evaluation and Negotiation	Feb 2023 – August 2023
Award Governance	August 2023 – November 2023
Contract Award	November 2023
Execute Contract	December 2023
Contract Go-live	April 2024
Commence HS2 deliveries	April 2025
Conclude HS2 deliveries	December 2027

Yours faithfully

**FOR AND ON BEHALF OF NETWORK RAIL INFRASTRUCTURE LIMITED**