

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:

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For and on behalf of The Secretary of State for Transport

Acknowledged and agreed:

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For and on behalf of the Office of Rail and Road