

DATED

2022

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH
OF HAMMERSMITH & FULHAM

And

HIGH SPEED TWO (HS2) LIMITED

**LICENCE EXTENSION
FOR ACCESS AND UNDERTAKING CONSTRUCTION WORKS**

Relating to:

Old Oak Common Lane (OOCL), Wormwood Scrubs London

Assistant Director
Legal Service
London Borough of Hammersmith and Fulham
Town Hall
King Street
London W6 9JU
Ref: RS/40002105

LBHF REVISED 5/5/2022

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This licence is dated _____ 22

Parties

- (1) **The Mayor and Burgesses of the London Borough of Hammersmith and Fulham** of Town Hall, King Street Hammersmith London W6 9JU ("**Council**")
- (2) **High Speed Two (HS2) Limited** of Two Snowhill, Snow Hill Queensway, Birmingham, B4 6GA ("**HS2**").

BACKGROUND

- (A) HS2 and those authorised by HS2 require rights to enter onto, use and occupy parts of the Property for the purposes of undertaking the Sewer Works.
- (B) The Council is the registered freehold owner of the Property and is willing to grant HS2 and those authorised by HS2 rights to enter onto, use and occupy parts of the Property for the purpose of undertaking the Sewer Works subject to the terms of the Planning Permission and this Licence.

Agreed terms

1. Interpretation

- 1.1 The following definitions and rules of interpretation apply in this agreement.

Assurance Agreement: agreement dated 20 October 2016 made between the Secretary of State for Transport and the Council a copy of which attached to this Licence under **Schedule 4**

The Alternative Access Licence (Braybrook Street): the licence granted to HS2 dated 12 February 2021 to carry out preparation works

Commencement Date of Licence: 22 September 2022

Competent Authority: any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers

Compensation Claims: any compensation claims by the Council from HS2 under the High-Speed Rail (London – West Midlands) Act 2017 ("the 2017 Act") and the Compensation Code.

Council's Costs: the Council's proper and reasonable legal and surveying costs (excluding any recoverable VAT) associated with all agreements identified under this Licence PROVIDED THAT

such costs are in accordance with the Assurance Agreement (for the avoidance of doubt this will include the Council's legal and surveying costs).

Designated Days and Hours: the hours of 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays (excluding Sundays and public holidays) Provided that HS2 and those authorised by HS2 are permitted to use the Licence Area outside of the Designated Days and Hours for the purposes of providing security services and if it is deemed by HS2 or those authorised by them (acting reasonably) to be operationally necessary

High-Speed Rail (London – West Midlands) Act 2017 (“the 2017 Act”): the HS2 2017 Act governing the Sewer Works

Licence Area: the part of the Property (accessed via OOCL) over which rights are granted by this Licence and shown edged in red on the Licence Plan (ref 1CP02-BVS_WSP-HW-DGA-SS07-000001Rev P01.1)

Licence Period: the period of SIX MONTHS from and including the Commencement Date until the date on which this licence is determined in accordance with clause 7

Plan: the licence plan attached under **Schedule 1**

Necessary Consents: all planning permission(s), permits, consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority in order to carry out the Temporary Construction Access Road work.

Permitted Use: entry onto, use and occupation of the Licence Area at all times with or without vehicles plant equipment construction materials to implement the OOCL Planning Permission and undertake the Sewer Works and Temporary Construction Access Road works.

Previous Licence: the licence dated 22 March 2021 for a term of 18 months (expiring on 21 September 2022) together with all deeds and documents supplemental to the same

OOCL Planning Permission: the planning permission granted to the Council in respect of the construction of the OOCL access attached to this Licence under **Schedule 3**

Sewer Works: the sewer works as defined in the Assurances Agreement under clauses 2.1 to 2.5 (inclusive) being diversion works in pursuance of “Phase One Purposes” defined under section 67 of the High-Speed Rail(London – west Midlands) Act 2017 (the Scheme).

Temporary Construction Access Road: the access road to the Stamford Brook Sewer satellite compound from Old Oak Common Lane; and temporary ancillary development including the creation of earthworks, erection of fencing, creation of a drainage swale and the laying of subsurface drainage pipes, as outlined in the planning permission approval in Schedule 3 of this Licence.

Property: freehold property known as Wormwood Scrubs and Old Oak Common Wood Lane London W12 0DF registered at HM Land Registry with title absolute under title number BGL75687

Schedule of Condition: the photographic schedule of condition of the Property and Licence Area provided by HS2 and attached at **Schedule 2**

Schedule 16 Notices: the notices served by HS2 on the Council (and the Wormwood Scrubs Charitable Trust) dated 26th February 2020 (Notices numbers N-085215 and N-085216) in accordance with Schedule 16 of the High-Speed Rail (London – West Midlands) Act 2017.

VAT: value added tax chargeable under the Value Added Tax Act 1994.

SDLT: means stamp duty land tax

Working Day: any day other than Saturday after 13:00, Sunday or bank holidays in England

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this Licence and shall have effect as if set out in full in the body of this Licence. Any reference to this Licence includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** does not include fax.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 References to a document in **agreed form** are to that document in the form agreed by the parties and initialled by or on their behalf for identification.
- 1.13 A reference to **this Licence** or to any other agreement or document referred to in this Licence is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Licence) from time to time.

- 1.14 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Commencement

This Licence shall commence on the Commencement Date.

3. Licence

- 3.1 Subject to clause 5 and clause 6, the Council grants (in consideration of the undertaking given by HS2 in the Previous Licence and this Licence) to HS2 and those authorised by HS2 the right during the Licence Period and the Designated Days and Hours for the Permitted Use to enter onto, use and occupy the Licence Area for the Permitted Use in common with the Council and all others authorised by the Council (so far as is not inconsistent with the above rights given to the Licensee) for the Licence Period.
- 3.2 The Council warrants that it has the legal right to grant the rights contained in this Licence and warrants either that no other party's consent is needed to grant this Licence or that where the consent of any other party is required, the Council has obtained that consent.
- 3.3 The parties agree and acknowledge that:
- (a) no relationship of landlord and tenant is created between the Council and HS2 by this licence;
 - (b) HS2 and those authorised by HS2 shall use the Licence Area as a licensee and not as of right;
 - (c) the Council retains possession and management of the Licence Area and HS2 has no right to exclude the Council from the Licence Area but it is agreed that the Council shall not grant any rights or licences to third parties over the Licence Area without the consent of HS2 (such consent not to be unreasonably withheld or delayed) and shall liaise with HS2 in respect of any access to ensure compliance with relevant health and safety and construction design and management laws and regulations ; and
 - (d) This Licence is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this licence. The licence can only be exercised by HS2 and those authorised by HS2 for the Permitted Use. HS2 shall be permitted to perform any or all of its obligations under this Licence by procuring that those obligations are properly performed on its behalf.

4. Licensor's Obligations

The Council agrees:

- 4.1 following a request from HS2 and/or those authorised by it, to provide any relevant information about any hazards (including man-made hazards) or potential hazards on the Licence Area to ensure the health and safety of those persons exercising the rights and performing the obligations under this Licence to the extent that the Council has such information available to it;
- 4.2 not to obstruct nor interfere, nor allow any third parties under the control of the Council (including for the avoidance of doubt and without limitation employees agents representatives workmen contractors licensees or invitees) to obstruct or interfere with the use of the Licence Area for the Permitted Use or the Sewer Works;
- 4.3 Should the Council intend to transfer or otherwise dispose of the Licence Area or any part of it, to:
 - 4.3.1 give HS2 Ltd not less than 14 days' prior notice of such transfer or disposal or grant and the identity of the proposed party to whom a transfer or disposal is to be made;
 - 4.3.2 use reasonable endeavours to ensure that the proposed party identified under clause 4.4(a) enters into a new licence with HS2 on the terms of this Licence; and
 - 4.3.3 notify HS2 in writing as soon as reasonably practicable following any third party becoming an owner of the Licence Area.
- 4.4 In the event the attached planning permission expires before completion of the Temporary Construction Access Road works and the Sewer Works the Council is obliged to secure any necessary planning permissions and consents required by HS2 in the event HS2 needs to extend the initial 18 month period of this Licence to complete the Temporary Construction Access Road works and the Sewer Works PROVIDED THAT the costs incurred by the Council under this clause 4.4 will be paid by HS2 on demand.
- 4.5 If necessary, on request from HS2, the Council (, will allow HS2 to access the Property and erect temporary fencing outside the Licence Area perimeter to enable the safe construction and reinstatement of the Temporary Construction Access Road in a position to be agreed by the parties

5. Licensee's obligations

- 5.1 HS2 agrees and undertakes:
 - (a) give the Council not less than five working days' notice (unless otherwise agreed between the parties) in writing of HS2's intention to commence the Temporary Construction Access Road works ;
 - (b) obtain the Necessary Consents

- (c) compliance with the OOCL Planning Permission;
- (d) with skill, care, diligence as is reasonably expected of skilled, competent and properly qualified professional undertaking works of the nature of the Temporary Construction Access Road works on projects of similar size and scope.
- (e) Comply with its obligations under the HS2 2017 Act

5.2 HS2 further undertakes:

- (a) not to cause or permit nuisance, damage, disturbance, annoyance, inconvenience or interference to the Council or adjoining owners or occupiers, provided that the Council agrees that the use of the Licence Area for the Permitted Use and the carrying out of the Sewer Works in accordance with the obligations in this Licence shall not constitute causing or permitting a nuisance, damage disturbance, annoyance, inconvenience or interference to the Council or adjoining owners or occupiers;
- (b) not to act in a way which may amount to a breach of the OOCL Planning Permission
- (c) not to act in breach of any permit or Necessary Consents;
- (d) not to park or leave any equipment and/or material on the Property (excluding the Licence Area and in relation to this Licence only) or cause or allow obstruction on the same;
- (e) not at any time to obstruct the entrance to the Property;
- (f) not to interfere with the Council or its employees, servants or agents in its ownership, enjoyment, operation and use of the Property or its equipment at the Property (excluding the Licence Area) or any right enjoyed by the Council or occupiers of any adjoining property;
- (g) not to erect any structure or place any advert or sign on the Licence Area except as permitted under this Licence;
- (h) To securely fence the Licence Area prior to commencement of the Temporary Construction Access Road works and maintain in reasonable condition any such fences during the Licence Period to the reasonable satisfaction of the Council;
- (i) If necessary, to ensure temporary hard standing areas are created within the site area boundary to facilitate the construction of the Sewer Works.
- (j) To use reasonable endeavours to complete the Sewer Works within the Licence Period

5.4 HS2 shall procure and maintain at all times public liability insurance in the sum of £10,000,000.00 or over for any one incident and shall provide full particulars of such insurance if requested so by the Council.

5.5 HS2 will be responsible for effecting insurance for its own fixtures and fittings and any equipment utilised for the Temporary Construction Access Road works.

- 5.6 HS2 agrees and undertakes to pay all rates (if any) which may be payable by reason of or in consequence of the use of the Licence Area under this Licence.
- 5.7 HS2 will undertake all due diligence relating to ground investigations and all other appropriate surveys and searches at its own costs (unless where the same relates to the OOCL Planning Permission) and will provide any such reports to the Council (at no cost) for information and on a non-reliance basis only.
- 5.8 On completion of the Temporary Construction Access Road works, HS2 and the Council will enter into scheduled discussions concerning the hand back of the licence area under the Alternative Access Licence to agree a hand back date with vacant possession of the same.

6. Licensee indemnity

- 6.1 HS2 shall indemnify the Council against all direct losses (which in this clause 6.1 shall mean any claims, demands, damages, losses and liabilities (subject to provisos (a), (b), (c) and (d) immediately below) reasonably incurred costs and expenses including any applicable VAT) arising from a failure by HS2 or those authorised by it to comply with its obligations in this Licence, unless such claims, demands, damages, losses, costs or expenses arise as a result of the default, or negligence of the Council and anyone authorised by it SUBJECT TO:
- (a) the Council giving written notice to HS2 as soon as reasonably practicable of any potential claim under this clause 6.1, specifying the nature of the claim in reasonable detail;
 - (b) the Council at the cost of HS2 (such costs to be reasonably incurred) providing such further information and assistance as HS2 may reasonably request in relation to any claim under this clause 6.1;
 - (c) the Council mitigating any losses it may suffer or incur as a result of an event which may give rise to a claim under this indemnity as far as is reasonably possible; and
 - (d) the Council not making any admission of liability or settling, agreeing or compromising any action, claim or demand which may give rise to a claim under this clause 6.1 without the prior written consent of HS2 (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Council may settle the claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to HS2, but without obtaining the HS2's consent) if the Council reasonably believes that failure to settle the claim would be prejudicial to it in any material respect.
- 6.2 for the avoidance of doubt, no payments will be due under this clause 6 or otherwise under this Licence from HS2 to the Council at any time during which any works or costs are in dispute or awaiting determination under clause 22.

7. Termination of the licence

7.1 This licence shall end in on the following events whichever is the earliest:

- (a) Expiry date of this Licence ; or
- (b) By HS2 on serving the Council one calendar month prior written notice to terminate; or
- (c) Completion of the Sewer Works as certified by HS2

7.3 Termination under this clause 7 shall be without prejudice to any right or remedy of the either party in respect of any antecedent breach of obligations and conditions on the part of either party under the Licence.

8. Making good and Reinstatement

HS2 agrees upon termination in accordance with clause 7 to:

- (a) remove all structures, materials plants and equipment and belongings of HS2; and
- (b) reinstate the Licence Area and the Property to its original state and condition as evidenced by the Schedule of Condition within 3 calendar months of termination to the Council's satisfaction; and
- (c) make good any damage caused to adjoining properties by HS2 undertaking the Temporary Construction Access Road works
- (d) the Council agrees to afford HS2 such access to the Licence Area following termination as is reasonably required to comply with the obligation under this clause 8.

9. Acknowledgements

HS2 acknowledges that:

- (a) the Property may be contaminated with substances that may be hazardous to health;
- (b) the Necessary Consents will be exercised, and the Temporary Construction Access Road works will be carried out at HS2's own risk and expense.

10. Limitation of Council's liability

10.1 Subject to clause 4, the Council is not liable for:

- (a) the death of, or injury to HS2 or anyone authorised by them, save where caused by the negligence of the Council;
- (b) damage to any property of HS2 or anyone authorised by them; or
- (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by HS2 or anyone authorised by them in the exercise or purported exercise of the rights granted under this Licence.

11. Consequences of termination

- 11.1 Any provision of this Licence that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Licence shall remain in full force and effect.
- 11.2 Termination or expiry of this Licence shall not affect any rights remedies of HS2 or the Council that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Licence which existed at or before the date of termination or expiry.

12. Force majeure

Neither party shall be in breach of this Licence nor liable for delay in performing, or failure to perform, any of its obligations under this Licence if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for one month the party not affected may terminate this Licence by giving fourteen (14) working days written notice to the affected party.

13. Entire agreement

- 13.1 This Licence constitutes the entire agreement between the parties in respect of the grant of rights over the Licence Area and supersedes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 13.2 Neither party has entered into this Licence in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement which is not expressly set out in this Licence.
- 13.3 The only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into this Licence and which is expressly set out in this Licence will be for breach of contract.
- 13.4 Nothing in this clause 13 shall be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

14. Variation

No variation of this Licence shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. Rights and remedies

The rights and remedies provided under this Licence are in addition to, and not exclusive of, any rights or remedies provided by law.

16. Severance

16.1 If any provision or part-provision of this Licence is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Licence.

16.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Licence is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

17. No partnership or agency

17.1 Nothing in this Licence is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

17.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18. Further assurance

Each party shall use all reasonable endeavours to procure that any necessary third party (if any) shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Licence.

19. Notices

19.1 Any notice given to a party under or in connection with this Licence shall be delivered by hand or by pre-paid first-class post or other next working day delivery service to the addresses for the parties set out at the beginning of this Licence or such other address as shall have been notified to the other party in writing.

19.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, on the second Working Day after posting.

- 19.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 19.4 A copy of any notice given to HS2 under this Licence in accordance with clause 19.1 shall also be sent by email to: HS2Notice@hs2.org.uk.
- 19.5 A copy of any notice given to the Council under this Licence in accordance with clause 19.1 shall also be sent by email to: Richard.Gill@lbhf.gov.uk and rachel.silverstone@lbhf.gov.uk

20. Rights of third parties

- 20.1 A person who is not a party to this Licence shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Licence. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

21. Governing law

This Licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

22. Dispute Resolution

The parties shall use reasonable endeavours to resolve any dispute arising in connection with this Licence between themselves. In the event of a failure to resolve any such dispute within 10 working days (time shall not be of essence):

- (a) either party may refer the dispute to Alternative Dispute Resolution which may include expert determination, appointment of a Specialist Advisor or through Mediation;
- (b) the appointment will be jointly by the parties to this Licence (who in default of agreement shall on application by either party be appointed by the President of the Royal Institution of Chartered Surveyors) ;
- (c) the decision made shall be final (except in the case of manifest error);
- (d) the costs of the parties and the costs of the appointment shall be paid by HS2 and the Council in equal proportions

23. Interest

If HS2 fails to make any payment due to the council under this agreement by the due date for payment, then, without limiting the Licensor's remedies under this Licence, HS2 shall pay interest on the overdue amount at the rate of 0.5% per annum above National Westminster Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. HS2 shall pay the interest together with the overdue amount.

24. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

25. HS2 dealing with third party protestors

HS2 shall be permitted by the Council to take all necessary measures to deal absolutely (at its own risk and expense) with any third-party objections to its presence on the Licence Area whether such objections are manifested by protestors on the Licence Area or otherwise.

26. Confidentiality

No disclosure of details of this transaction (including price and terms) will be made without prior written agreement of the Council and HS2, save as required by law to third party advisors or under the Freedom of Information Act.

27. Council’s Costs, Compensation Claim, VAT and SDLT

HS2 will pay to the Council: :

(a) the Council’s Costs on demand

(b) the Compensation Claim if demanded (for the avoidance of doubt, the Council agreed to forgo a licence fee in respect of this Licence on the understanding and agreement with HS2 that any compensation to the Council for the Licence Area under the Schedule 16 Notice will be no less than it could claim on the Special Assumption that HS2 remained in occupation of the Alternative Access Licence area as well as the remainder of this Licence included in the Schedule 16 Notice for the duration of this Licence and completion of the Sewer Works (whichever is the later).

(c) the irrecoverable VAT and/or SDLT (if any) associated under this Licence (the parties to this Licence have agreed not to opt to tax this Licence for VAT purposes)

This licence has been entered into on the date stated at the beginning of it.

Executed for and on behalf of)
THE MAYOR AND BURGESSES OF THE)
LONDON BOROUGH OF HAMMERSMITH)
AND FULHAM)

.....

Head of Law / Chief Solicitor

Executed for and on behalf of)
HIGH SPEED TWO (HS2) LIMITED by)
authorised signatories)

.....
Authorised signatory

.....
Authorised signatory

SCHEDULE 1- LICENCE PLAN

SCHEDULE 2 - SCHEDULE OF CONDITION

SCHEDULE 3 - PLANNING PERMISSION

SCHEDULE 3 - ASSURANCE AGREEMENT