

- recognises that performance information is the property of the *Client*,
- provides any performance information requested by the *Client*, to the required quality and timescales,
- treats performance information as a significant asset,
- provides deconstructed operational or source data requested by the *Client*, along with supporting narrative where required to qualify outlying performance and any actions being undertaken,
- provides performance information used internally by the Contractor to construct performance metrics as requested by the *Client*,
- updates data accurately and ensures performance data is entered precisely against the relevant fields and attributes in the Performance Management Information System. If any data formatting requirements are unclear the Contractor seeks clarification from the *Client*,
- scores the collaborative behavioural metrics.

1.4 Targets for Performance

- 1.4.1 During the contract the *Client* reserves the right to introduce or modify targets and metrics for the Contractor's performance.
- 1.4.2 Targets and metrics pertaining to the provision of information are contained within the Collaborative Performance Framework Guidance.

East Region Asset Delivery

Scope

Annex 18

Continual Improvement and Innovation

CONTENTS AMENDMENT SHEET

Amend. No.	Revision No.	Amendments	Initials	Date
0	0	Tender Issue	SEL	18/3/19

LIST OF CONTENTS

1.	CONTINUAL IMPROVEMENT AND INNOVATION	4
1.1	Purpose and Scope	4
1.2	Outcome Requirements	4
1.3	Strategic Objectives	5
1.4	The Methods:	7
1.5	Performance Measurement.....	13
1.6	Training	14

1. CONTINUAL IMPROVEMENT AND INNOVATION

1.1 Purpose and Scope

1.1.1 This Annex sets out the *Client's* minimum requirements for the Contractor in terms of continual improvement using Lean principles and Structured Innovation for the delivery of the *service*.

1.1.2 Continual improvement and innovation comprises five parts:

- (1) Outcome requirements
- (2) Strategic objectives
- (3) The method (s)
 - Lean Continual Improvement
 - Structured Innovation
- (4) Performance measurement
- (5) *Client's* training

1.2 Outcome Requirements

1.2.1 The primary outcome from using continual improvement, based upon Lean principles, is the generation and realisation of reductions in the cost of Providing the Service for the benefit of both the *Client* and the Contractor, while still achieving the requirements of the customer. These cost reductions will contribute to the overall efficiency savings that are specified in the Highways England Strategic Business Plan 2015-2020 and Highways England Delivery Plan 2015-2020 and beyond. Lean efficiency savings will be registered on the *Client's* regional efficiency register.

1.2.2 An additional outcome will be the improvement of quality in providing the *service*, at a reduced or no additional cost to the *Client*.

1.2.3 A further outcome will be that collaborative working techniques, such as Lean Collaborative Planning will become fully integrated into all business activities. This will ensure a one team approach is seen as the culture for this contract and drive engagement right the way down from the client through the entire supply chain. Lean Collaborative Planning will be used to manage the delivery of both programmes and projects.

- 1.2.4 Lean continual improvement will ensure a focus is maintained at all times on the requirements of the customer, both internal and external.
- 1.2.5 A full appreciation and considerations of the importance to whole life costing must be adhered to at all times. Highways England and its supply chain contractor's will need to demonstrate with supportive evidence that full consideration to whole life costs during the optioneering value engineering phases of a design.
- 1.2.6 Structured Innovation techniques will be deployed routinely in conjunction with Lean to generate new ideas and step changes for more efficient ways of working, thus contributing to cost savings, while still meeting the requirements of the customer. The use of structured innovation is a technique that dovetails perfectly into Highways England's deployment of Lean both within its supply chain and internally. Structured innovation will provide the tools to assist with the generation of ideas for the solution of problems during the Improvement phase of any Lean intervention.

1.3 Strategic Objectives

- 1.3.1 Highways England's key themes which the Contractor is required to deliver are:
- planning for the future,
 - growing our capability,
 - building stronger relationships,
 - efficient and effective delivery,
 - improved customer services.
- 1.3.2 The Contractor's executive leadership team need to fully understand their role as Continual Improvement Lean Innovation Leaders, they should:
- commit themselves to self-development in terms of Lean continual improvement and structured innovation, not only by attending training workshops, but through background reading.
 - coach others in terms of Lean continual improvement and Structured Innovation,
 - drive and support a culture of daily Lean continual improvement, kaizen and innovation,
 - create the Continual improvement and innovation vision which aligns goals both vertically and horizontally, to meet the needs of the *Client*.

- 1.3.3 The Contractor's executive leadership team shall ensure that the continual improvement requirements, based upon Lean principles, are fulfilled at all times and shall actively drive Lean deployment in every aspect of their organisation.
- 1.3.4 The Contractor will pro-actively manage their supply chain to ensure collaborative working takes place at all times to drive efficiency and achieve reductions in cost.
- 1.3.5 The Contractor will identify their key value streams to deliver the services and have a systematic and prioritized approach for the continuous/ongoing review and improvement of these value streams. The review of the value streams will also include the analysis and improvement of the Processes and Procedures contained within the Scope, Annex 16 - Quality Management. The review of the value streams will identify waste and remove it.
- 1.3.6 The Contractor will actively seek out improvement opportunities that primarily generate reductions in the cost of providing the Service whilst also still meeting the needs of the customer. The Contractor will not only generate new and original improvement opportunities, but shall make full use of the Highways England Lean Knowledge Transfer Packs (KTP), which detail improvement ideas from the highways sector, that they can deploy on their phase of the construction process.
- 1.3.7 The Contractor will ensure that their staff and their supply chain's staff have Lean Continual Improvement and Structured Innovation skills and understanding. The level of skill and understanding required will vary depending on the role being executed, but the contractor shall train sufficient numbers of staff to meet the needs of the business and those of the *Client*.
- 1.3.8 The Contractor will ensure that every member of staff, from the most senior leader down, has Lean Continual Improvement goals incorporated into their annual Personal Development Plans. These goals will contribute to the efficiency targets that Highways England is required to achieve, as defined in the *Client's* Strategic Business Plan of 2015 to 2020 and beyond.
- 1.3.9 The Contractor will ensure the realisation of the cost savings for all payment types in the contract (Lump Sum, Schedule of Rates, Time Charge, Cost Reimbursable etc) by using Lean Continual Improvement and Structured Innovation techniques. These efficiencies shall be registered on the *Client's* regional efficiency register, with supporting evidence lodged as a BRCF and KTP on the HE Lean tracker.

- 1.3.10 The Contractor will deliver other benefits that result in an improvement to the quality of the *service* at a reduced or no additional cost to the *Client*, whilst also meeting the requirements of the customer.

1.4 The Methods:

LEAN CONTINUAL IMPROVEMENT

- 1.4.1 The Contractor is required to execute, as a minimum, the following continual improvement methodology, although it is accepted that it may adopt, at its own discretion, additional methods to deliver the above outcome requirements and strategic objectives, but at all times these additional methods must ensure customer needs are met.
- 1.4.2 Lean is a method of delivering the above outcome requirements and strategic objectives and is a way of delivering value in a system. It produces what a customer wants, when it is required, with a minimum of waste, and to a high level quality. Lean works through a relentless elimination of waste and reduction of variation. The reduction of variation will bring stability to programme and project delivery through the use of Lean collaborative planning techniques.
- 1.4.3 The Contractor will use Lean tools to systematically make improvements, in a planned sequence, to its key value streams and the Processes and Procedures in its Quality Plan (as defined by Scope, Annex 16) in order to identify customer requirements, establish and optimise the execution of value adding activity, identify and minimise non-value adding activity and eliminate waste.
- 1.4.4 The execution of continual improvement forms part of the role and accountability of the Executive Process Owner, as defined in Scope, Annex 16 – Quality Management. Continual improvement is the role and duty of every member of staff, just as with Health and Safety.
- 1.4.5 The following points below in cl 1.4.6 are a synopsis of the Lean continual improvement methodology that are contained in the Highways England Lean Maturity Assessment (HELMA). The full HELMA document and scoring matrix is available for free download from the Highways England Lean Publications web-site, these documents represents a skeleton for how a successful business would operate to continuous improvement principles. It must be emphasised that Lean is not a stand-alone continual improvement methodology, undertaken by a select few, but is a successful business operating methodology and culture to be undertaken by everyone working on this contract.

1.4.6 The Contractor will:

Integration of Lean into Business Strategy

- integrate Lean principles within the organisation's Area Strategic Business plan and key strategy documents.
- ensure that the Area Strategic Business Plan sets out how Lean plays a part in delivering improved business performance.
- ensure that there is a well-defined and documented approach quantifying the benefits Lean will deliver to the business and its customers within the Area Strategic Business Plan. It is expected that a figure will be specified by the contractor for the Lean efficiencies that will be generated on an annual basis.

Lean Leadership and Engagement

- ensure that the leadership team area fully engaged as Lean leaders and drive the Lean methodology as the chosen form of continual improvement throughout the organisation, its supply chain and collaborating with the client.
- ensure that the organisation's leadership team are trained as Lean leaders and have a Lean skill base so they can mentor others.
- ensure that Lean is an agenda item at leadership team and below meetings.

Deployment Management/ Lean Infrastructure

- ensure that the organisation has a Lean deployment strategy in place that will manage all Lean activity.
- the Lean deployment strategy will analyse business and client needs, the training of staff, the analysis of Value Streams, whilst also prioritising Lean activity for the capture of efficiency benefits and the transfer of knowledge. The Lean strategy will cover each of the 10 HELMA aspect areas.
- lean priorities shall be set by consensus in line with the company vision and have the full commitment of the leadership team.
- a Lean deployment programme for the year shall be in place that follows the format of the Improvement Action Plan (IAP).

Understanding Customer Value

- ensure that an integrated customer satisfaction process exists whereby all employees are aware of customer satisfaction levels.
- the organization will actively seek customer and *Client* input to its operations.

- the organisation will consult with customers and *Client* on issues before they occur
- the organisation shall employ its own independent customer satisfaction systems / surveys to drive continued improvement.
- the organization will deploy Kano analysis to fully meet and understand the needs of its client.

Understanding of processes and value streams

- for all critical value streams and most minor processes, effectiveness is frequently measured, displayed and counter measures introduced when required to drive continual improvement.
- for all value streams and processes, formal improvement plans are seamlessly woven into the day to day activities of the teams within the organisation.
- when value streams and processes are analysed, bottlenecks will be identified, root causes for defects will be understood and waste removed via the application of the eight wastes.

Use of Methodology and Tools

- ensure that the organisation has adopted a kitbag of Lean tools that meet the needs of its business and those of its client. The kitbag of tools deployed will ensure the specified Lean efficiency targets are delivered.
- ensure that the kitbag of Lean tools is made readily available to all employees and the organisation's supply chain.
- ensure success stories via KTPs from Lean deployment link back to the kitbag of tools.
- ensure all employees and the organisation's supply chain have received formal training in the deployment of the kitbag of Lean tools. This will contribute to improving the capability of their supply chain.

Organisational Coverage, Activity and Capability

- ensure that everyone within the organisation has had the opportunity to develop their personal Lean capability. Ensure that a targeted approach is taken to driving Lean within the organisation's supply chain. The success of this training can be measured by undertaking a HELMA on the organisation's suppliers. A target score for HELMA of 1.5 and above is deemed as an acceptable minimum level for an organisation developing a

continuous improvement culture.

- ensure the training programme for the organisation has the optimum blend of Lean awareness, Practitioners, Green Belts, Black Belts and Master Black Belts to support the improvement programmes and there is a genuine growth in Lean capability.

Performance Improvement/ Benefit Realisation and Delivery

- ensure that they directly contribute to the Highways England Area Efficiency Register by lodging efficiencies and registering them as Lean techniques.
- the contributions to the Efficiency Register shall be evidenced through Knowledge Transfer Packs lodged on the Highways England Lean Tracker and supported by Benefit Realisation Capture Forms (BRCF). Guidance on BRCFs and KTPs is available for free download from the HE portal.
- the organisation's leadership team shall review and ensure improvement activities are tracked and managed through to their ultimate realisation.

Lean Collaboration, Climate and Culture

- leaders shall create a climate in which people want to do their best, to motivate direct reports and all team members of the organisation.
- leaders shall ensure meetings are conducted around visual display boards, where team performance is actively displayed, discussed and countermeasures put in place to mitigate concerns and causes to drive root cause solutions to problems
- ensure integrated teams are established that deploy collaborative planning on the delivery phase of all construction projects and collaborative programme planning for the delivery of programmes of work.

Supplier Maturity

- ensure that supply chain partners are an active and integral part of the project teams.
- Lean improvement activity is founded on a collaborative working approach with true integrated project teams working with customers / clients / stakeholder and supply chain partners.
- ensure that all supply chain partners adopt Lean principles and processes to routinely improve their business area and improve the capability of the entire supply chain

- 1.4.7 In carrying out the above methodology the Contractor shall enable and support its supply chain in the adoption of Lean Continual Improvement and shall engage the supply chain in Lean improvement projects, and
- 1.4.8 The Contractor refers to the *Client's* Managing Down Cost Toolkit to identify and consider continual improvement opportunities.

STRUCTURED INNOVATION

- 1.4.9 Structured Innovation is a unique, rigorous and powerful toolbox of techniques that can be applied to ensure that all potential areas of innovation are explored when seeking solutions to a problem. The toolbox of techniques has been developed from the Russian Theory of Inventive Problem Solving, (TRIZ).
- 1.4.10 The use of the structured innovation tools are a direct compliment to Lean continual improvement and it dovetails exactly into the Improvement phase of any Lean continual improvement intervention. Structured Innovation is a complimentary initiative to Lean continual improvement and provides a tool-box of innovation techniques that sits within the Lean continual improvement philosophy and provides a mechanism for the generation of ideas at the Improvement phase of any lean intervention.
- 1.4.11 The Contractor will execute the following minimum structured innovation methodology, although it is accepted that it may adopt, at its own discretion, additional methods to deliver structured innovation
- 1.4.12 The Contractor will use structured innovation tools to drive a culture of innovation within their business. By adopting a structured approach it will ensure innovation becomes a skill that can be applied by all staff and not just a select few,
- 1.4.13 The execution of structured innovation will enable Contractor's staff to come up with large step change ideas to meet the challenges of the future as identified in Highways England Strategic Business Plan of 2015-2020, in terms of increased spend balanced against a finite resource and expected efficiency savings.
- 1.4.14 Contractor will:
- Strategic Use of Structured Innovation. Adopt structured innovation principles as part of formal strategic plans for the Contractor's business including the Area Strategic Business Plan.
 - Effective Supporting Infrastructure. Define, develop and establish a supplier network hub to raise awareness and use of structured

innovation techniques.

- Innovation Leadership. Ensure senior leaders and management within the Contractor's organization enthusiastically embrace the concept of structured innovation and drive its use.
- People Development. Ensure an education and training programme has been designed and deployed for all levels to cover structured innovation.
- Structure and Behaviour. Ensure policies and procedures promote, encourage and support the use of structured innovation, and that a mechanism is in place to capture innovations that link to the solution of problems.
- Collaborative Working. Ensure that structured innovation is used to drive innovation at collaborative working meetings.

1.4.13 In carrying out the above approach the Contractor assists and enables its supply chain in the adoption of structured innovation techniques.

1.4.14 The following list of Structured Innovation tools represent the minimum that the Contractor will use in deploying structured innovation

- consider "ideality" at the start when solving any problem, what is your ideal solution without the constraints of cost and technology and from this you can assess what are the main functions of ideality that you must deliver, and those functions that can be dropped.
- thinking in both time and scale, using the 9 Box technique,
- the structured innovation prism, which leads you to consider world problems which mirror your problem which will lead to world solutions,
- the 39 technical contradictions matrix, which leads to 40 inventive principles,
- the use of functional analysis for the trimming of harmful actions from an operating system,
- the 8 trends of evolution,
- the analysis of the resources you have in your system which best match your customer's requirements,
- the effects data base of 2500 solutions,
- the 12 standard creativity triggers to promote big picture thinking,
- identify on KTP how structured innovation helped deliver a solution.

1.5 Performance Measurement

- 1.5.1 The Contractor will record and measure the benefits realised from the execution of the Lean Continual Improvement process in accordance with the *Client's* Lean Benefits Realisation Guide. This system uses a benefits realisation capture form (BRCF) which at start up reports the forecast of expected savings and upon completion records the actual savings achieved. The Contractor submits a Knowledge Transfer Pack (KTP) for every improvement that is made so that this knowledge can be shared across the industry and further savings can be made when this new way of working is implemented. The Contractor will also proactively reviews and implements previous Knowledge Transfer Packs and adopts these new ways of working within its own organisation. Additionally, the KTPs form the documentary evidence that is required by the Office of Rail and Road regulation for the efficiencies Highways England is claiming.
- 1.5.2 The Contractor will submit a annual Lean continual improvement action plan to the *Client* and Lean technical manager. Copies of the IAP can be downloaded free.
- 1.5.3 The Contractor will report to the *Client* and *Lean Technical Manager* on a monthly basis the following matters using an "A3" format performance report. Details of the A3 format are available for download on the HE website:
- Lean benefits achieved within month and forecast lean activities for the next month in line with the milestones in the annual Lean continual improvement action plan.
 - ensure results are recorded showing general details about the improvement, planned/targeted benefits, and actual / realised benefits with supporting calculations,
- 1.5.4 For all Lean efficiency savings and all Lean projects the Contractor:
- Reports savings using the Client's Benefits Realisation Capture Form, and area efficiency register,
 - Completes Knowledge Transfer Pack, in either a report or A3 style that follows DMAICT principles,
 - Logs the KTP on the Client's Lean Tracker System as detailed in Annex 6 – Information Systems.
- 1.5.5 The Contractor will adjust its delivery of continual improvement process based on lessons learned from the ongoing measurement of its performance.

1.6 Training

1.6.1 The *Client* will support the Contractor with training sessions in the following areas:

- 1 day of Lean awareness for key staff,
- Collaborative Planning and Programme Planning workshop, for key staff,
- Effective use of Continual Improvement Cells workshop, for key staff,
- Structured Innovation awareness workshop for key staff
- Lean problem solving workshop for key staff.

East Region Asset Delivery (AD)

Scope

Annex 19 Records

CONTENTS AMENDMENT SHEET

Amend. No.	Revision No.	Amendments	Initials	Date
0	0	Tender Issue	SEL	18/3/19

LIST OF CONTENTS

1 RECORDS 5

1.1 General 5

1.2 Retention of Records 5

1 RECORDS**1.1 General**

- 1.1.1 For the purpose of this annex, records shall include inventories.
- 1.1.2 The Contractor creates and maintains the records in the format and for the duration set out in this annex.
- 1.1.3 The Source/Usage column of Table 1 identifies, where applicable, the source document that defines the inventory/record type and the frequency at which or the circumstances under which the Contractor updates and amends the relevant records.
- 1.1.4 The Contractor ensures that records are maintained in an acceptable format such as:
- (1) Scanned electronic image (Acrobat .pdf),
 - (2) Editable electronic document (MSWord),
 - (3) Editable electronic spreadsheet (MSExcel),
 - (4) Electronic editable vectorised drawing format (.dwg AutoCAD format or equivalent),
 - (5) Graphic electronic image in compressed (.jpg) format, or
 - (6) Other formats compatible with the *Client's* Information Systems, reference documents or guidance manuals as agreed with the *Service Manager*.
- 1.1.5 The Contractor may from time to time agree with the *Service Manager* alternative acceptable formats in which the Contractor maintains records, taking into account advances and other developments in information systems. The Contractor implements any changes as agreed with the *Service Manager*.
- 1.1.6 The Contractor creates, maintains and provides (and ensures that any Subcontractors create and provide) such records that are necessary to Provide the Services.
- 1.1.7 Where applicable, all records created or maintained electronically shall have the metadata (document properties) completed to the satisfaction of the *Service Manager*.

1.2 Retention of Records

- 1.2.1 The Contractor retains all electronic and other records in good order for the duration of this contract in such form as to be capable of audit (including electronic means) by the *Service Manager*. The Contractor makes the records available for inspection by the *Service Manager* at all reasonable times and provides copies of these records at regular intervals as agreed with the *Service Manager*. The Contractor retains records in line with the latest Highways England retention policy which if amended will be cascaded for implementation. The Contractor also maintains records in line with any statutory record keeping responsibilities and until expiry of the *service period* or termination of this contract (unless

the *Service Manager* agrees otherwise) and subject to any applicable law or legal requirement imposing a different retention period.

- 1.2.2 The Contractor specifies the age of each record and provides them to the *Service Manager* at the end of the contract.

Table 1: Record Types		
Ref No.	Record Type	Source/Usage
1.	Agreements between the <i>Client</i> and Others	
2.	All calculations in relation to Schemes	
3.	All contract documents produced by the Contractor and any amendments thereto	
4.	All Drawings/ plans/ maps	Whenever the Contractor is required to produce, update, amend or receive from others drawings, plans or maps in accordance with the contract
5.	All maintenance and other manuals to be produced by the Contractor	As required by the Reference Documents in Annex 3
6.	All data required for the Information Systems referred to in Annex 6	Whenever the Contractor is required to populate the Information Systems referred to in Annex 6
7.	All records/data required to populate reports under this contract to be issued by the Contractor.	
8.	Financial Records and Cost Capture Information	<p>All financial records:</p> <ul style="list-style-type: none"> • required to be captured, recorded or updated by the Contractor including those referred to in Annex 10 Cost Capture Data Requirements, or • required to substantiate or demonstrate validity of the above.

Table 1: Record Types		
Ref No.	Record Type	Source/Usage
9.	Photographic Images (High Resolution: 300DPI, Large file format)	Wherever the Contractor is required to obtain photographs including progress photographs
10.	All correspondence with Contractors, Sub Contractors and Others.	
11.	Land Ownership & Land Management	

East Region Asset Delivery (AD)

Scope

Annex 24

Parent Company Guarantee

DATED [●]

HIGHWAYS ENGLAND COMPANY LIMITED
as Client

[●]
as Guarantor

PARENT COMPANY GUARANTEE

relating to a term contract for the provision of [●] in Highways England Area [●]

DATED [●]**PARTIES**

- (1) **HIGHWAYS ENGLAND COMPANY LIMITED** (company no 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ. (the “Client”)
- (2) [●] (company no [●]) whose registered office is at [●] (the “Guarantor”)

BACKGROUND

- (A) By the Contract, the Client has employed the Contractor to provide the Services.
- (B) The Guarantor is the [ultimate]¹ parent company of the Contractor.
- (C) The Guarantor has agreed to guarantee the due performance by the Contractor of his obligations under the Contract in the manner set out in this deed.

OPERATIVE PROVISIONS**1. DEFINITIONS AND INTERPRETATION**

- 1.1. Unless the contrary intention appears, the following definitions apply:

“Contract” means the contract dated [●] between the Client (1) and the Contractor (2) under which the Contractor has agreed to provide the Services.

“Contractor” means [●] (company no [●]) whose registered office is at [●].

“Insolvency Event” means the Contractor being unable to pay its debts (as defined by Sections 123(1) and 268(1) of the Insolvency Act 1986) or any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Contractor other than a solvent liquidation or reorganisation of the Contractor;
- (b) a composition, assignment or arrangement with any creditor of the Contractor;
- (c) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Contractor or any of its assets; or
- (d) enforcement of any security over any assets of the Contractor, or any analogous procedure or step is taken in any jurisdiction.

¹ Note to Procurement Officer: delete if not applicable.

“Services” means the services to be provided by the Contractor pursuant to the Contract.

- 1.2. The clause headings in this deed are for the convenience of the parties only and do not affect its interpretation.
- 1.3. Words importing the singular meaning include the plural meaning and vice versa.
- 1.4. Words denoting the masculine gender include the feminine and neuter genders and words denoting natural persons include corporations and firms and all such words shall be construed interchangeably.
- 1.5. References in this deed to a clause are to a clause of this deed.
- 1.6. References in this deed to any statute or statutory instrument include and refer to any statutory amendment or re-enactment for the time being in force.

2. GUARANTEE

- 2.1. In consideration of the Client agreeing to enter into the Contract with the Contractor, the Guarantor irrevocably and unconditionally guarantees and undertakes to the Client that:
 - a) the Contractor will perform and observe all his obligations under the Contract at the times and in the manner provided in the Contract; and
 - b) in the event of any breach of such obligations by the Contractor, the Guarantor shall procure that the Contractor makes good the breach or otherwise cause it to be made good and shall indemnify the Client against any loss, damage, demands, charges, payments, liability, proceedings, claims, costs and expenses suffered or incurred by the Client arising from or in connection with it.
- 2.2. The Guarantor shall also indemnify the Client against:
 - a) any costs, losses and expenses (including legal expenses) which may be suffered or incurred by the Client in seeking to enforce and enforcing (i) this Guarantee and/or (ii) any judgment or order obtained in respect of this Guarantee; and
 - b) any loss or liability suffered or incurred by the Client if any of the obligations of the Contractor under the Contract is or becomes illegal, invalid or unenforceable for whatsoever reason as if such obligations were not illegal, invalid or unenforceable.
- 2.3. Any limitation or defence which would have been available to the Contractor in an action under the Contract shall likewise be available to the Guarantor in a corresponding action under this deed, provided that nothing in this clause shall:
 - a) prejudice or affect any liability of the Guarantor under clause 2.2; nor

- b) allow the Guarantor to avoid liability if either of the events specified in clause 5 occurs.

3. GUARANTOR'S LIABILITY

- 3.1. The obligations of the Guarantor under this deed are in addition to and independent of any other security which the Client may at any time hold in respect of the Contractor's obligations under the Contract and may be enforced against the Guarantor without first having recourse to any such security.
- 3.2. The obligations of the Guarantor under this deed are in addition to and not in substitution for any rights or remedies that the Client may have against the Contractor under the Contract or at law.
- 3.3. The liability of the Guarantor under this deed shall in no way be discharged, lessened or affected by:
 - a) an Insolvency Event;
 - b) any change in the constitution, status, function, control or ownership of the Contractor or any legal limitation, disability or incapacity relating to the Contractor or any other person;
 - c) the Contract or any of the provisions of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
 - d) any time given, waiver, forbearance, compromise or other indulgence shown by the Client to the Contractor;
 - e) the assertion or failure to assert or delay in asserting any rights or remedies of the Client or the pursuit of any right or remedy of the Client;
 - f) the giving by the Contractor of any security or the release, modification or exchange of any such security or the liability of any person; or
 - g) any other act, event, omission or circumstance which but for this provision might operate to discharge, lessen or otherwise affect the liability of the Guarantor,
- 3.4. in each case with or without notice to, or the consent of, the Guarantor and the Guarantor unconditionally and irrevocably waives any requirement for notice of, or consent to, such matters.
- 3.5. Any decision of an adjudicator, expert, arbitral tribunal or court in respect of or in connection with the Contract and any settlement or arrangement made between the Client and the Contractor shall be binding on the Guarantor.

4. VARIATIONS TO THE CONTRACT

- 4.1. The Guarantor authorises the Contractor and the Client to make any addition or variation to the Contract, the due and punctual performance of which shall

likewise be guaranteed by the Guarantor in accordance with the terms of this deed. The liability of the Guarantor under this deed shall in no way be discharged or lessened by any such addition or variation.

5. LIQUIDATION/DETERMINATION

5.1. The Guarantor covenants with the Client that:

- a) if a liquidator is appointed in respect of the Contractor and the liquidator disclaims the Contract; or
- b) if the Contractor's employment under the Contract is determined for any reason,

the liability of the Guarantor under this deed shall remain in full force and effect.

6. WAIVER

6.1. The Guarantor waives any right to require the Client to pursue any remedy (whether under the Contract or otherwise) which it may have against the Contractor before proceeding against the Guarantor under this deed.

7. RIGHTS OF GUARANTOR AGAINST CONTRACTOR

7.1. The Guarantor shall not by any means or on any ground seek to recover from the Contractor (whether by instituting or threatening proceedings or by way of set-off or counterclaim or otherwise) or otherwise to prove in competition with the Client in respect of any payment made by the Guarantor under this deed nor be entitled in competition with the Client to claim or have the benefit of any security which the Client holds for any money or liability owed by the Contractor to the Client. If the Guarantor shall receive any monies from the Contractor in respect of any payment made by the Guarantor under this deed, the Guarantor shall hold such monies in trust for the Client for so long as the Guarantor remains liable or contingently liable under this deed.

8. CONTINUING GUARANTEE

8.1. The terms of this deed are a continuing guarantee and shall remain in full force and effect until each part of every obligation of the Contractor under the Contract has been performed and observed and until each and every liability of the Contractor under the Contract has been satisfied in full.

9. THIRD PARTY RIGHTS

9.1. Unless the right of enforcement is expressly granted, it is not intended that any third party should have the right to enforce any provision of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

10. NOTICES

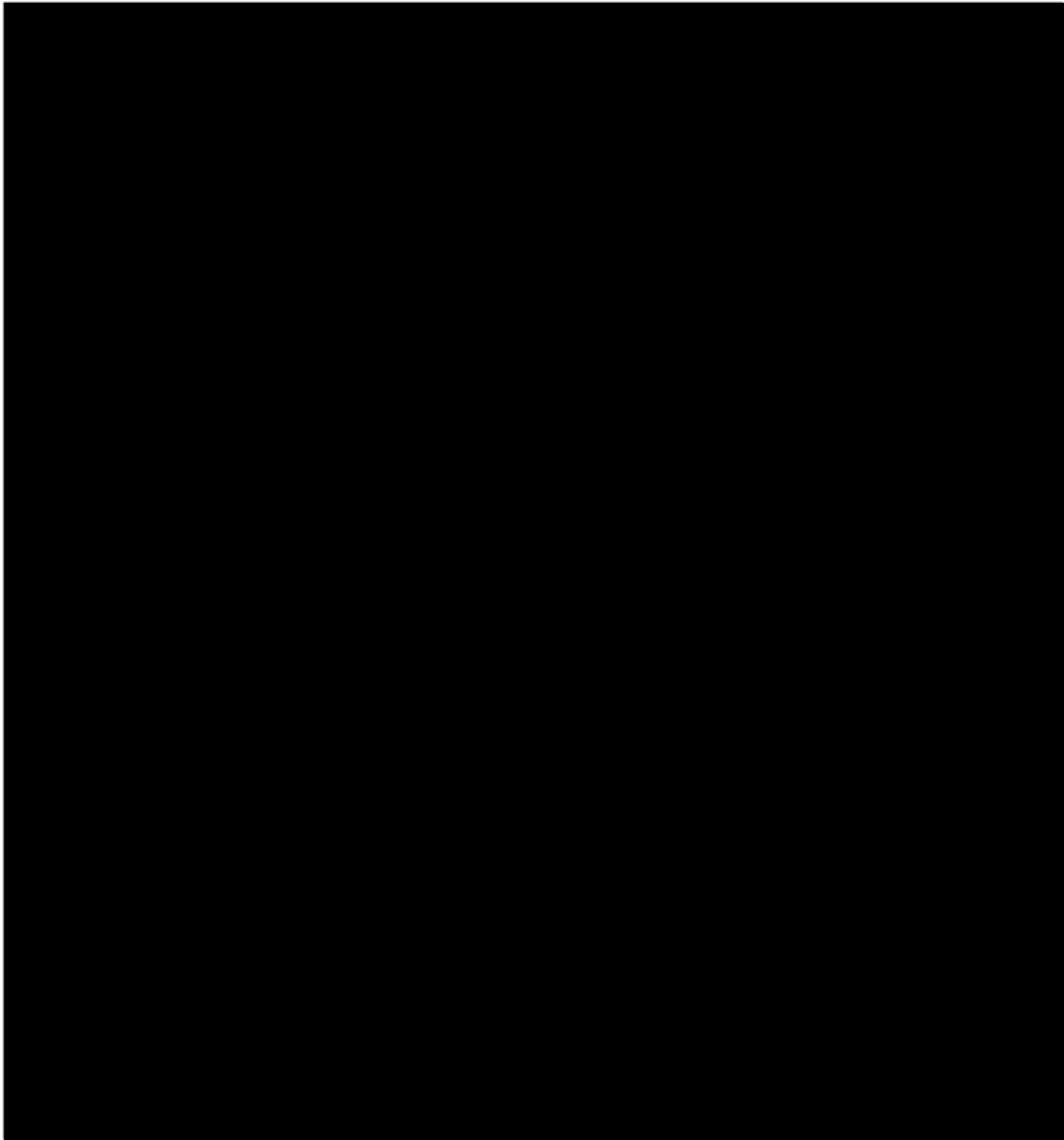
- 10.1. Any notice or other communication required under this deed shall be given in writing and shall be deemed to have been properly given if compliance is made with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962 and the Postal Services Act 2000).

11. GOVERNING LAW

- 11.1. The application and interpretation of this deed shall in all respects be governed by English law and any dispute or difference arising under it shall be subject to the exclusive jurisdiction of the courts of England and Wales save that any decision, judgment or award of such courts may be enforced in the courts of any jurisdiction.

This deed has been executed as a deed and delivered on the date stated at the beginning of this deed.

EXECUTION PAGE



East Region Asset Delivery (AD)

Scope

Annex 25A

Form of Novation

DATED [•]

HIGHWAYS ENGLAND COMPANY LIMITED
as Old Client

[•]
as New Client

[•]
as Contractor

DEED OF NOVATION

relating to a term contract for the provision of design services in Highways England
East Region

DATED [●]

PARTIES

- (1) **HIGHWAYS ENGLAND COMPANY LIMITED** (company no 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ (the "Old Client")
- (2) [*insert details of replacement authority*] (the "New Client")
- (3) [●] (company no [●]) whose registered office is at [●] (the "Contractor")

BACKGROUND

- (A) By the Contract, the Old Client has employed the Contractor to provide the Services.
- (B) The Old Client has agreed (with the consent of the Contractor) to transfer all its rights and obligations under the Contract to the New Client and the Contractor has agreed to accept the liability of the New Client in place of the liability of the Old Client under the Contract upon and subject to the terms of this deed, which is supplemental to the Contract.

1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless the contrary intention appears, the following definitions apply:

"Contract" means the contract dated [●] between the Client (1) and the Contractor (2) (including any further agreement varying or supplementing the Contract) under which the Contractor has agreed to provide the Services.

"Services" means the services to be provided by the Contractor pursuant to the Contract.

- 1.2 The clause and paragraph headings in this deed are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- 1.3 Words in this deed denoting the singular include the plural meaning and vice versa.

1.4 References in this deed to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments and regulations made pursuant to it.

1.5 Words in this deed importing one gender include both other genders and may be used interchangeably, and words denoting natural persons, where the context allows, include corporations and vice versa.

2. NOVATION

2.1 The Old Client and the Contractor release and discharge each other from the further performance of their respective obligations under the Contract and the Contractor acknowledges and accepts the liability of the New Client in place of the liability of the Old Client under the Contract.

2.2 The Contractor undertakes to be bound to the New Client by the terms of the Contract in every way as if the New Client was and always had been a party to the Contract in place of the Old Client.

2.3 The Contractor acknowledges and warrants to the New Client that it has duly observed and performed and will continue duly to observe and perform all its obligations under the Contract.

3. NEW CLIENT'S UNDERTAKING

3.1 Subject to Clause 4.1 below, the New Client undertakes to be bound to the Contractor by the terms of the Contract and to perform the obligations on the part of the *Client* under the Contract in every way as if the New Client was and always had been a party to the Contract in place of the Old Client.

4. PAYMENT OF SUMS DUE

4.1 The Contractor and the Old Client agree that the total amount to be paid by the Old Client to the Contractor for the Services provided under the Contract prior to the date of this deed is £[●]. The Contractor acknowledges that the Old Client has paid the sum of £[●] prior to the date of this deed. The balance of £[●] shall be invoiced by the Contractor to the Old Client and paid by the Old Client in accordance with the Contract.

- 4.2 The Contractor and the New Client agree that the New Client shall be solely responsible (to the exclusion of the Old Client) for payment of all sums due to the Contractor under the Contract for any Services provided after the date of this deed.
- 4.3 [Where, under Clause 2.2 above or under any other contract between the New Client and the Contractor, any sum of money is recoverable from or payable by the Contractor to the New Client, such sum may be deducted from or reduced by the amount of any sum then due or which may at any time become due from the New Client to the Contractor under Clause 4.2 above or under any other contract with any Department or Office of Her Majesty's Government.]¹

5. NOTICES

- 5.1 Any notice or other communication required under this deed shall be given in writing and shall be deemed to have been properly given if compliance is made with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962 and the Postal Services Act 2000).

6. GOVERNING LAW AND DISPUTES

- 6.1 This deed and any non-contractual obligations arising out of or in connection with it shall be governed by English law.
- 6.2 The parties agree that the courts of England and Wales shall have exclusive jurisdiction to determine any dispute arising out of or in connection with this deed, including (without limitation) in relation to any non-contractual obligations. The parties irrevocably submit to the jurisdiction of those courts.

This Deed has been executed as a deed and delivered on the date stated at the beginning of this Deed.

¹ Include only if the New Client is a Department or Office of Her Majesty's Government.

OPTION 1a *[execution by Highways
England under seal]*)
)
)

Executed as a deed by **HIGHWAYS
ENGLAND COMPANY LIMITED** by affixing
its common seal in the presence of:

Director

Director/Secretary

OPTION 1b *[execution by Highways
England under seal]*)
)
)

Executed as a deed by **HIGHWAYS
ENGLAND COMPANY LIMITED** by affixing
its common seal in the presence of:

Authorised Signatory

Authorised Signatory

OPTION 2a Executed as a deed by)
HIGHWAYS ENGLAND COMPANY)
LIMITED acting by:)

Director

Director/Secretary

OPTION 2b Executed as a deed by)
HIGHWAYS ENGLAND COMPANY)
LIMITED acting by:)

Authorised Signatory

DATED [•]

HIGHWAYS ENGLAND COMPANY LIMITED
as Client

[•]
as New Contractor

[•]
as Old Contractor

DEED OF NOVATION

relating to a term contract for the provision of professional design services in
Highways England East Region

DATED [●]**PARTIES**

- (1) **HIGHWAYS ENGLAND COMPANY LIMITED** (company no 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ (the "Client")
- (2) *[insert details of replacement Contractor]* (the "New Contractor")
- (3) [●] (company no [●]) whose registered office is at [●] (the "Old Contractor")

BACKGROUND

- (A) By the Contract, the Client has employed the Old Contractor to provide the Services.
- (B) The Old Contractor has agreed (with the consent of the Client) to transfer all its rights and obligations under the Contract to the New Contractor and the Client has agreed to accept the liability of the New Contractor in place of the liability of the Old Contractor under the Contract upon and subject to the terms of this deed, which is supplemental to the Contract.

1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless the contrary intention appears, the following definitions apply:

"Contract" means the contract dated [●] between the Client (1) and the Old Contractor (3) (including any further agreement varying or supplementing the Contract) under which the Old Contractor has agreed to provide the Services.

"Services" means the services to be provided by the Old Contractor pursuant to the Contract.

- 1.2 The clause and paragraph headings in this deed are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- 1.3 Words in this deed denoting the singular include the plural meaning and vice versa.

1.4 References in this deed to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments and regulations made pursuant to it.

1.5 Words in this deed importing one gender include both other genders and may be used interchangeably, and words denoting natural persons, where the context allows, include corporations and vice versa.

2. NOVATION

2.1 The Old Contractor and the Client release and discharge each other from the further performance of their respective obligations under the Contract and the Client acknowledges and accepts the liability of the New Contractor in place of the liability of the Old Contractor under the Contract.

2.2 The New Contractor undertakes to be bound to the Client by the terms of the Contract in every way as if the New Contractor was and always had been a party to the Contract in place of the Old Contractor.

2.3 The Client acknowledges and warrants to the New Contractor that it has duly observed and performed and will continue duly to observe and perform all its obligations under the Contract.

3. NEW CONTRACTOR'S UNDERTAKING

3.1 Subject to Clause 4.1 below, the New Contractor undertakes to be bound to the Client by the terms of the Contract and to perform the obligations on the part of the Contractor under the Contract in every way as if the New Contractor was and always had been a party to the Contract in place of the Old Contractor.

4. PAYMENT OF SUMS DUE

4.1 The Client and the Old Contractor agree that the total amount to be paid by the Client to the Old Contractor for the Services provided under the Contract prior to the date of this deed is £[●]. The Old Contractor acknowledges that the Client has paid the sum of £[●] prior to the date of this deed. The balance of £[●] shall be invoiced by the Old Contractor to the Client and paid by the Client in accordance with the Contract.

- 4.2 The New Contractor acknowledges that any payment made by the Client to the Old Contractor in respect of the Services (whether before or after the date of this deed) shall be treated as having been made to the New Contractor and that the Client's payment obligation under the Contract shall to that extent be treated as discharged.

5. NOTICES

- 5.1 Any notice or other communication required under this deed shall be given in writing and shall be deemed to have been properly given if compliance is made with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962 and the Postal Services Act 2000).

6. GOVERNING LAW AND DISPUTES

- 6.1 This deed and any non-contractual obligations arising out of or in connection with it shall be governed by English law.
- 6.2 The parties agree that the courts of England and Wales shall have exclusive jurisdiction to determine any dispute arising out of or in connection with this deed, including (without limitation) in relation to any non-contractual obligations. The parties irrevocably submit to the jurisdiction of those courts.

This Deed has been executed as a deed and delivered on the date stated at the beginning of this Deed.

OPTION 1a *[execution by Highways
England under seal]*)
)
)

Executed as a deed by **HIGHWAYS
ENGLAND COMPANY LIMITED** by affixing
its common seal in the presence of:

Director

Director/Secretary

OPTION 1b *[execution by Highways
England under seal]*)
)
)

Executed as a deed by **HIGHWAYS
ENGLAND COMPANY LIMITED** by affixing
its common seal in the presence of:

Authorised Signatory

Authorised Signatory

OPTION 2a Executed as a deed by)
HIGHWAYS ENGLAND COMPANY)
LIMITED acting by:)

Director

Director/Secretary

OPTION 2b Executed as a deed by)
HIGHWAYS ENGLAND COMPANY)
LIMITED acting by:)

Authorised Signatory

Authorised Signatory

Executed as a deed by **[OLD CONTRACTOR]**
in the presence of:

)
)

Authorised Signatory

Authorised Signatory

Executed as a deed by **[NEW CONTRACTOR]**
in the presence of:

)
)

Director

Director/Secretary

East Region Asset Delivery (AD)

Scope

Annex 26

Customer Service