

AGREEMENT (SERVICES)

The Parties to this Agreement are:

NATIONAL HIGHWAYS LIMITED (company number 09346363), whose registered office is Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ ("**the Client**"); and

Reed Mobility Limited (Company registration number 12372949), whose registered office is 10 Beech Court, Wokingham, RG10 0RQ ("**Service Provider**")

1. Purpose and interpretation

- 1.1. This Agreement comprises these terms and conditions, together with the attached Schedules. The purpose of the Agreement is to set out the terms on which the Service Provider shall provide certain services to the Client. This Agreement is to be interpreted in accordance with Schedule 1.

2. Service Provider obligations

- 2.1. The Service Provider shall provide the Services and shall do so using due skill and care in compliance with the Specifications, with the law and in accordance with good industry practice.
- 2.2. If the Agreement states a date by which a service is to be completed, the Service Provider shall complete the Service by that date. If no date has been agreed, the Service Provider shall provide the Services diligently and within a reasonable time.

3. Special Terms

- 3.1. The Client and the Service Provider shall comply with any Special Terms in Schedule 2.

4. Representatives and Key Personnel

- 4.1. The persons named in Schedule 2 shall represent the Client and the Service Provider in relation to this Agreement. The Service Provider shall ensure Key Personnel named in Schedule 2 are engaged in providing the Services, unless the Client has agreed in writing (agreement not to be unreasonably withheld).

5. Payment

- 5.1. The Client shall pay the Service Provider the Charges for Services properly provided within 30 days of receipt of a valid invoice issued in accordance with Schedule 2.
- 5.2. Each Party shall pay interest on demand on any sum due under this Agreement at the rate of 4% a year above the Bank of England base rate from time to time. Interest is payable from when the sum became overdue until it is paid.
- 5.3. The Client may set-off any amount due to it from the Service Provider under any agreement against any amount payable by it to the Service Provider under this Agreement.

6. Changes to services/additional services

- 6.1. The Client may require a change or addition to the Services by written notice. The Service Provider shall comply with the requirement and, if it affects the cost (or timing) of delivery of the Services, the amounts payable for (or, as the case may be, time for delivery of) the Services shall be subject to reasonable adjustment, as determined by the Client.

7. IPR

- 7.1. IPR owned by a Party or third party at the date of this Agreement or created independently by a Party or third party of this Agreement, ("**Background IPR**"), remains the property of that Party.

- 7.2. The Service Provider shall disclose to the Client IPR created or developed by the Service Provider, or its subcontractors (at any stage of remoteness from the Client), in providing the Services ("**Foreground IPR**") and it shall belong to the Client. If this Clause does not make any Foreground IPR automatically belong to the Client on creation, the Service Provider shall enter into such documents and shall undertake such acts as the Client shall request to transfer the Foreground IPRs to the Client and shall procure that its subcontractors (at any stage of remoteness from the Client) do the same. The Service Provider shall provide to the Client the documents which transfer these Foreground IPRs to the Client.
- 7.3. The Client grants to the Service Provider a royalty-free, non-exclusive, non-transferable licence to use the Client's Background IPR, with a right to sub-license, solely for the purpose of provision of the Services. The licence provided under this Clause shall expire upon completion of the Services. On Completion of the whole of the Services, the Service Provider shall return the material provided by the Client to him unless agreed otherwise by the Client.
- 7.4. The Service Provider grants to the Client a perpetual royalty-free, non-exclusive, assignable and irrevocable licence capable of being sublicensed to a third party (who shall also have the right to grant further sub-licenses) to the Service Provider's or third party's Background IPR, for the purpose of using, further development and modification of, and publishing the Services and materials provided by the Service Provider under this Agreement. Any licence granted under this Clause shall survive the termination or expiry of this Agreement and cannot be terminated by the Service Provider or its assignees or any third party. The Service Provider shall and shall procure that any subcontractor (at any stage of remoteness) or third party shall, provide to the Client the documents which license these IPRs to the Client.
- 7.5. Subject to Clause 7.6, the Client shall grant to the Service Provider a royalty-free, non-exclusive, perpetual licence to use and exploit any copyright and database rights within Foreground IPR, with the right to grant sub-licenses. The Service Provider shall (and shall procure that any of its sub-licensees shall) use such Foreground IPR in accordance with the terms of the open government licence (as amended from time to time) which can be accessed via the following link: <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>
- 7.6. The Client hereby grants to the Service Provider a royalty-free, non-exclusive licence, with the right to grant sub-licenses, to use any IPR within Foreground IPR other than copyright and database rights for the provision of Services and for academic research, academic publications and teaching.
- 7.7. The Service Provider shall do what is necessary to ensure the Client has the rights described in this Clause 7.
- 7.8. Except as expressly stated in this Agreement, the Client does not acquire any ownership_right, title or interest in or to the Service Provider's or third party's Background IPR.
- 7.9. Except as expressly stated in this Agreement, the Service Provider or third party does not acquire any ownership_right, title or interest in or to the Client's Background IPR and Foreground IPR.

8. Confidentiality

- 8.1. Each Party ("**receiving party**") shall:
- 8.1.1. treat as confidential all Confidential Information of the other Party ("**disclosing party**") and not disclose it to any other person without the prior written consent of the disclosing party; and

- 8.1.2. not use such Confidential Information except for the Purpose.
- 8.2. Clause 8.1 shall not prevent the receiving party disclosing information:
 - 8.2.1. which is in the public domain at the time of disclosure;
 - 8.2.2. which is received by the receiving party from a third party who is not restricted by a confidentiality obligation; or
 - 8.2.3. where disclosure is required by law.
- 8.3. The receiving party may disclose Confidential Information of the disclosing party to a Permitted Recipient, being the receiving party's legal advisers, employees, any other person named in Schedule 2 as a Permitted Recipient and (where the Client is the receiving party) its consultants and any Crown body. The receiving party undertakes to the disclosing party to ensure that the Permitted Recipient does not disclose to any person other than the parties to this Agreement and any other Permitted Recipient.
- 8.4. The Parties agree that the content of this Agreement is not Confidential Information and the Service Provider consents to the Client publishing this Agreement.

9. FOIA, Public Contracts Regulations 2015 and EIR

- 9.1. The Service Provider shall:
 - 9.1.1. assist and cooperate as reasonably requested by the Client to enable the Client to comply with the FOIA, the Public Contracts Regulations 2015 and the EIR;
 - 9.1.2. transfer to the Client all Requests for Information relating to this Agreement as soon as practicable and no later than two working days after receipt;
 - 9.1.3. give the Client a copy of all information belonging to the Client requested in the Request for Information which is in its possession or control, in the form that the Client requires, within five working days (or other period as the Client may reasonably specify) of the Client's request; and
 - 9.1.4. not respond directly to a Request for Information unless authorised in writing to do so by the Client.
- 9.2. If the Client is required under the FOIA, Public Contracts Regulations 2015 or the EIR to disclose information concerning the Service Provider or the Services (including commercially sensitive information) it shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Service Provider advance notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 9.3. The Client shall determine in its absolute discretion whether any information relating to the Service Provider or Services is exempt from disclosure in accordance with the FOIA, the Public Contracts Regulations 2015 and/or the EIR.

10. Data protection

- 10.1. Each Party shall comply with all applicable requirements of the General Data Protection Regulation ((EU) 2016/679) or any national implementing laws or regulations, which arise in connection with this Agreement.
- 10.2. The Service Provider shall not process any personal data on behalf of the Client and shall not be a data processor for purposes of the General Data Protection Regulation ((EU) 2016/679) or any national implementing laws or regulations.

11. Progress information and record-keeping

- 11.1. The Service Provider shall attend progress meetings and report on progress as required by the Client. The Service Provider shall keep until six years after expiry or termination of this

Agreement full and accurate records in relation to the Services, including records to substantiate its invoices, documents and information obtained or prepared by the Service Provider or any subcontractor (at any remoteness from the Client) in connection with this Agreement. The Service Provider shall give and shall procure its subcontractors (at any remoteness from the Client) shall give, the Client or its representatives access to those records as the Client may request.

- 11.2. The Service Provider shall permit the Client and the Comptroller and Auditor General to examine documents held or controlled by the Service Provider or any subcontractor (at any remoteness from the Client).
- 11.3. The Service Provider shall provide such oral or written explanations as the Client or the Comptroller and Auditor General considers necessary.
- 11.4. This Clause shall not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the Service Provider.

12. Indemnities

- 12.1. The Service Provider shall indemnify the Client against all costs, expenses, damages and losses (direct or indirect), including reasonable professional fees, awarded against or incurred by the Client as a result of:
 - 12.1.1. a claim against the Client for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, supply or use of the Services, to the extent the claim is attributable to the acts or omission of Service Provider or its Staff;
 - 12.1.2. death of or personal injury to any person, to the extent caused by the negligence of Service Provider or its Staff;
 - 12.1.3. damage to property, to the extent caused by the negligence of Service Provider or its Staff;
 - 12.1.4. fraud by Service Provider or its Staff or other conduct prohibited by Clause 13.

13. Prevention of fraud and corruption

- 13.1. The Service Provider shall not offer, give, or agree to give, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Agreement or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement. The Service Provider shall take all reasonable steps to prevent fraud by the Service Provider or its Staff in connection with this Agreement and shall notify the Client immediately if it suspects any fraud has occurred, is occurring or may occur.

14. Liability

- 14.1. The Service Provider's aggregate liability under or in relation to this Agreement and the supply of, or failure to supply, Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the Liability Cap of one million pounds (£1,000,000)
- 14.2. The Service Provider shall in no event be liable to the Client for any loss of profits, loss of business, loss of revenue, loss of or damage to goodwill, loss of savings (anticipated or otherwise) or any indirect, special or consequential loss or damage.
- 14.3. Nothing in this Agreement limits or excludes either Party's liability for:

- 14.3.1. death or personal injury caused by its negligence or that of its Staff;
- 14.3.2. fraud or fraudulent misrepresentation by it or that of its Staff; or
- 14.3.3. any other matter which, by law, may not be excluded or limited.
- 14.4. Nothing in this Clause 14 limits or excludes the Service Provider's liability under Clause 12.
- 15. Expiry and termination**
- 15.1. The Service Provider's obligation to provide Services expires on the date the Services are completed or, if earlier, the Expiry Date, unless the Client first terminates in accordance with Clause 16.
- 16. Rights to terminate**
- 16.1. The Client may terminate the Service Provider's obligation to provide Services at any time by 10 working days' notice in writing to the Service Provider.
- 16.2. The Client may terminate the Service Provider's obligation to provide Services by notice in writing with immediate effect if:
 - 16.2.1. the Service Provider fails to comply with any obligation under this Agreement and (if capable of remedy) has not remedied the failure within 10 working days of written notice from the Client requiring it to do so;
 - 16.2.2. the Service Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010;
 - 16.2.3. the Service Provider becomes bankrupt or insolvent, has a receiving order made against it, or makes an arrangement with creditors or (if a corporation) commences to be wound up; or
 - 16.2.4. fraud by the Service Provider or its Staff or conduct prohibited by Clause 13 occurs.
- 17. Effect of expiry and termination**
- 17.1. On expiry or termination, the Client shall pay to the Service Provider all amounts due and payable but unpaid at the date of termination.
- 17.2. Where the Client terminates pursuant to Clause 16.1, it shall also pay to the Service Provider costs properly incurred by the Service Provider in performing Services for which, at the date of termination, it is not yet entitled to invoice.
- 17.3. Where the Client terminates pursuant to Clause 16.2, the Service Provider shall pay to the Client the amount of any losses it has incurred as a result of the circumstances on the basis of which the Client has terminated.
- 17.4. On expiry or termination, the Service Provider shall:
 - 17.4.1. deliver to the Client any completed and uncompleted work product from the Services; and
 - 17.4.2. return to the Client any property of the Client.
- 17.5. Expiry or termination shall not affect any rights or liabilities that have accrued at the time of expiry or termination, nor any obligation of the Service Provider other than the obligation to provide Services.
- 18. Assignment and sub-contracting**
- 18.1. The Service Provider may not assign any rights or sub-contract any of its obligations under this Agreement without the written consent of the Client.
- 19. Entire Agreement**
- 19.1. This Agreement is the entire agreement between the parties and supersedes all previous agreements, assurances, warranties, representations and understandings between them, written or oral, relating to its subject matter. Neither Party has relied, in entering into this

Agreement, on any statement or representation of the other Party not expressly stated in this Agreement.

20. Waiver

- 20.1. No failure or delay by a Party to exercise any right or remedy under this agreement or by law constitutes a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

21. Third party rights

- 21.1. Unless expressly stated, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

22. Notices

- 22.1. Any notice to be given under this Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to Clause 22.3, e-mail to the address of the other Party set out in the Schedule, or such other address as that Party may from time to time notify to the other Party in accordance with this Clause.
- 22.2. Notices shall be deemed served on the day of delivery if delivery is before 5.00pm on a working day. Otherwise delivery shall be deemed to occur on the next working day. An email shall be deemed delivered when sent unless an error message is received.
- 22.3. Notices under Clause 16 (Termination) may only be served by email if the original notice is then sent to the recipient by personal delivery or recorded delivery in accordance with Clause 22.1.

23. Law

- 23.1. This Agreement is governed by the law of England.

24. Dispute Resolution

- 24.1. The NEC3 Professional Service Contract Option W2 shall apply, mutatis mutandis, and is deemed to be incorporated in to this Agreement.
- 24.2. For the purposes of operating clause W2:
- 24.2.1. the *Adjudicator nominating body* is the Chartered Institute of Arbitrators; and
- 24.2.2. the *tribunal* is arbitration;
- 24.2.3. the *arbitration procedure*, the arbitration procedure shall be the Chartered Institute of Arbitrators' Arbitration Rules (2000), or any later revision published at the time of the notice to refer to arbitration is issued;
- 24.2.4. the arbitration shall take place in London.
- 24.3. The person or organisation who will choose an arbitrator:
- 24.3.1. if the Parties cannot agree a choice or
- 24.3.2. if the arbitration procedure does not state who selects an arbitrator
- shall be the President for the time being of the Chartered Institute of Arbitrators or his nominee.

25. Publication of Contracts

- 25.1. The Service Provider shall acknowledge that the Client is obliged to publish information relating to the Agreement in accordance with Procurement Policy Note 01/17 entitled "The Transparency of Suppliers and Government to the Public" dated 16 February 2017 (or any later revision) (the "PPN 1/17"), except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The Client shall consult with the Service Provider before deciding whether information is exempt, but the Contractor shall acknowledge that the Client has the final decision.

- 25.2. The Service Provider shall:
- 25.2.1. co-operate with and assists the Client to enable the Client to comply with its obligation to publish information in accordance with PPN 01/17 or any later revision;
 - 25.2.2. agree with the Client a schedule for the release to the public of information relating to the contract by the *Client* in accordance with the terms of the PPN 1/17;
 - 25.2.3. provide information to assist the Client in responding to queries from the public as required by the PPN 1/17 and requested by the Client, and
 - 25.2.4. supply the Client with financial data relating to this Agreement in the form and at the times specified in the PPN 1/17.
- 25.3. The Service Provider shall acknowledge, under the Crown Commercial Services' guidance note dated November 2017 (or any later revision) entitled "Publication of Central Government Tenders and Contracts", the Client is obliged to publish the responses to a tender and the provisions of any contract let pursuant to it, excluding only information which is exempt from disclosure pursuant to the Freedom of Information Act 2000. The Client's initial view is that the only materials likely to be excluded from publication on this basis are as follows:
- 25.3.1. list of key personnel and representatives.

26. Energy Efficiency

- 26.1. The Service Provider shall comply with PPN 7/14 entitled "Implementing Article 6 of the Energy Efficiency Directive":
- 26.1.1. in providing the Services; and
 - 26.1.2. in the purchase of product for use by the Service Provider partially wholly for the purchase of providing the Services comply with the standards for products in Directive 2012/7/EU.
- 26.2. The Service Provider shall demonstrate to the Client how through providing the Services any new products purchased by the Service Provider for use partially or wholly for the purpose of providing the Services complies with the requirements of Procurement Policy Note 7/14 entitles "Implementing Article 6 of the Energy Efficiency Directive.. Procurement Policy Note 07/14: implementing Energy Efficiency Directive article 6 - GOV.UK.
- 26.3. The Service Provider shall include in the conditions of contract for each subcontractor obligations:
- 26.3.1. to comply with the Procurement Policy Note 7/14 entitled "Implementing Article 6 of the Energy Efficiency Directive" ("**PPN7/14**") and article 6 of Directive 2012/27/EU;
 - 26.3.2. to ensure that any products purchased by it for use partly or wholly in the performance of its obligations under the subcontract comply with the standard for products in Directive 2012/27/EU;
 - 26.3.3. to demonstrate to the *Supplier* how any products purchased by it for use partly or wholly in the performance of its obligations under the subcontract comply with requirements of PPN 7/14; and
 - 26.3.4. to include similar requirements in the conditions of contract for any subcontractor engaged by the subcontractor.

For and on behalf of **NATIONAL HIGHWAYS LIMITED:**

(authorised signatory)
Name:
Title:
Date:

For and on behalf of **Reed Mobility Limited Procurement Associates Ltd:**

(authorised signatory)
Name:
Title:
Date:

SCHEDULE 1

INTERPRETATION

In this Agreement:

These terms have the following meanings:

Agreed Percentage: the percentage stated in Schedule 2 or, if no percentage is stated, 200%.

Charges: the amount(s) to be paid to the Service Provider for the Services, as stated in Schedule 3.

Confidential Information: information, written or oral, provided by (or on behalf of) one Party to the other and which (i) is known by the recipient to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the recipient to be confidential.

EIR: Environmental Information Regulations 2004.

Expiry Date: the expiry date in Schedule 2 or such later date as the Client may notify the Service Provider in writing and which is not later than six months from the date stated in Schedule 2.

FOIA: the Freedom of Information Act 2000.

IPR: copyright and related rights, database rights, design rights, patents, inventions, trade marks (and goodwill attaching to those trade marks), domain names, applications for and the right to apply for any of the foregoing, moral rights, confidential information and any other intellectual or industrial property rights, whether or not registered or capable of registration, whether subsisting now or in future in any part of the world.

Key Personnel: the persons named in Schedule 2.

Liability Cap: the aggregate Charges required to be paid under this Agreement.

Party: a party to this Agreement.

Purpose: the purpose for which the Client may use the Service Provider's Confidential Information is any purpose within its powers. The purpose for which the Service Provider may use the Client's Confidential Information is the provision of the Services.

Request for Information: has the meaning set out in the FOIA, the Public Contract Regulations 2015 or the Environmental Information Regulations 2004 as relevant (where the meaning for the term "request" shall apply);

Services: the services referred to in Schedule 3, as varied from time to time in accordance with Clause 6.

Specifications: the specifications stated in Schedule 3.

Staff: all directors, officers, employees, agents, consultants (at any stage of remoteness from the Party) and contractors (at any stage of remoteness from the Party) of a Party.

A reference to **this Agreement** or to any other agreement or document is a reference to this agreement or such other document as validly varied or novated from time to time. A reference to a statute or regulation is a reference to it as amended or replaced from time to time.

Words following the terms **including or include** are illustrative and do not limit the sense of the words preceding them.

If the conditions of this Agreement are not consistent with the Schedules, the Schedules prevail.

SCHEDULE 2

AGREEMENT PARTICULARS

Details of the Service Provider

| | |
|--|-------------------------------------|
| Full name of the Service Provider | Reed Mobility Limited |
| Type of entity (e.g. company, registered charity, partnership) | Company |
| Company/registered charity number | 12372949 |
| Registered address or main place of business | 10 Beech Court, Wokingham, RG10 0RQ |

Representatives (Clause 4):

The Client shall be represented by:

or such person as the Client shall notify the Service Provider at any time in writing.

Service Provider shall be represented by

or such person as the Service Provider shall notify the Client at any time in writing.

Key Personnel (Clause 4):

Key Personnel to be engaged in the Services are:

Charges (Clause 5)

On completion of the relevant deliverable (set out in table 2.1 below), the Service Provider shall be entitled to invoice the Client the associated Charge indicated in table 2.1.

The Charges in table 2.1 are exclusive of VAT. Any tax which the law requires a Party to pay to the other Party shall be added to any payment made under this Agreement.

All payments shall be made in arrears for work carried out to date as follows:

| Deliverable | Charge | Date for deliverable | Test for deliverable |
|----------------------------------|--------|----------------------|----------------------|
| Services as agreed in Schedule 3 | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Table 2.1 Payment Table

Invoicing requirements (Clause 5):

Service Provider must submit invoices in accordance with the following requirements:

Invoices shall quote the following:

- National Highways Project Sponsor:
- Unique Purchase Order number: TBC
- Cost Centre:

and must be submitted to the Client's Finance Division at the Email address

- invoices@highwaysengland.co.uk:

The Service Provider shall submit a copy of the monthly invoice by E-mail to the project sponsor.

Agreed Percentage (definition of Liability Cap in Schedule 1):

100% of the remainder of the balance of the agreement outstanding when loss or failure was determined.

Expiry date (Clause 16 and Schedule 1 definition):

Special terms (Clause 3):

N/A

SCHEDULE 3

DESCRIPTION OF SERVICES AND SPECIFICATIONS

Purpose:

National Highways has an ambition that by 2040 no one will be injured on its roads. To achieve this, we need to think more expansively and are seeking an expert technical adviser to support, guide and challenge the board and executive on all aspects of road user safety across the network.

Specification:

The appointed Chief Road Safety Advisor will work to help shape a creative forward strategy, ensuring we are considering the right things, challenging our assumptions, and providing guidance that will positively influence outcomes. The remit will extend beyond National Highways, as an ambassador for the company and our road safety strategy will support us in brokering positive relationships with a range of external stakeholders across the public and private sectors, creating momentum to ensure a collective effort to achieving our ambitions.

Given the criticality of the agenda, the Chief Road Safety Advisor will be directly accountable to the CEO to:

1. Provide leadership and independent advice to the Executive, and Board, on road user safety priorities and policies to achieve the Vision Zero ambition.
2. Provide independent advice to the Executive, and Board, on ensuring that science and engineering evidence and advice is robust.
3. Fulfil an advocacy role, pro-actively facing into a range of commercial and public sector stakeholders, galvanizing positive discussion and action around road user safety.
4. Provide leadership in public engagement (press and media) on road safety.

The expert and technical nature of the advice on a critical strategic theme for National Highways will require regular interaction with the Chair, the Chair of the Safety Committee and the Executive, particularly the Chief Executive, Chief Highways Engineer, Executive Director Safety, Engineering and Standards, and the Director of Health and Safety. Likely external stakeholder engagement will include the Roads Minister and DfT, Road safety community (including Road Safety Charities, Police and Emergency Services, Roadside recovery industry and insurers) and some press/media relations

AGREEMENT (SERVICES)

BETWEEN

NATIONAL HIGHWAYS LIMITED

AND

Reed Mobility Limited

RELATING TO:

Chief Road Safety Advisor