

Dated

28th April 2021

AGREEMENT FOR PROVISION OF REPUTATION SURVEYS

BETWEEN

HIGHWAYS ENGLAND COMPANY LIMITED

AND

REPUTATION (RI) UK LTD



Dated

2021

BETWEEN

1. **HIGHWAYS ENGLAND COMPANY LIMITED** (company number 09346363), whose registered office is Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ (“the Client”); and
2. **Reputation (RI) UK Ltd** (registered with company number 07345603) of 150 Aldersgate Street, London EC1A 4AB (trading as “The RepTrak Company”)

AGREED AS FOLLOWS

1. Purpose and interpretation

1.1. In this Agreement the following terms have the following meanings

CEDR	The Centre for Dispute Resolution of 70 Fleet Street, London, EC4Y 1EU;
Charges	the amount to be paid to the Service Provider for the provision of the Services, as stated in Schedule 2;
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;
EIRs	The Environmental Information Regulations 2004;
FOIA	the Freedom of Information Act 2000;
Party	a party to this Agreement and “Parties” shall be construed accordingly;
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;
Representatives	The representatives of the Parties for the purpose of this agreement identified in clause 3;
Request for Information	has the meaning set out in the FOIA or the EIRS as appropriate;

Services

the services referred to in Schedule 1, as varied from time to time in accordance with clause 5;

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.

- 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 Agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this Agreement includes the Schedules.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8. A reference to a statute or statutory provision shall include all subordinate legislation made under that statute or statutory provision.
- 1.9. Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.
- 1.10. A reference to writing or written includes email.
- 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 them or on their behalf for identification.
- 1.13. 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.
- 1.14. 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. Service Provider obligations

- 2.1. In supplying the Services the Service Provider shall

- 2.1.1. perform the Services with reasonable care and skill;
- 2.1.2. perform the Services in accordance with the description set out in Schedule 1; and
- 2.1.3. comply with all applicable laws, statutes, regulations and codes of practice from time to time in force.

3. Parties' Representatives

- 3.1. For the purposes of this agreement the Client shall be represented by:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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

- 3.2. For the purposes of this agreement the Service Provider shall be represented by

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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

4. Payment of the Charges

- 4.1. The Service Provider shall submit invoices for the Charges (plus VAT if applicable) to the Client at the intervals specified in Schedule 2. Each invoice shall include all reasonable supporting information required by the Client.
- 4.2. The Client shall pay the Charges to the Service Provider within 30 days of receipt of a valid invoice issued by the Service Provider in accordance with clause 4.1.
- 4.3. The Client 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 due until it is paid.

5. Changes to services/additional services

- 5.1. The Client may request a change or addition to the Services by written notice to the Service Provider.
- 5.2. If the Service Provider agrees with the Client's request 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 adjustment, as determined by the Supplier and the Client (acting reasonably).

- 5.3. If the Service Provider does not agree with the Client's request the Service Provider shall continue to supply the Services on the terms applicable prior to the Client's request.

6. Confidentiality

- 6.1. Each Party ("**receiving party**") shall:

6.1.1. 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

6.1.2. not use such Confidential Information except for the Purpose.

- 6.2. Clause 6.1 shall not prevent the receiving party disclosing information:

6.2.1. which is in the public domain at the time of disclosure;

6.2.2. which is received by the receiving party from a third party who is not restricted by a confidentiality obligation

6.2.3. which is independently developed by the receiving party without use of the disclosing party's Confidential Information as evidenced by written documentation; or

6.2.4. where disclosure is required by law as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 6.3. The receiving party may disclose Confidential Information of the disclosing party to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the receiving party's obligations under this agreement. The receiving party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the disclosing party's confidential information comply with this clause 6. Where the Client is the receiving party it may additionally disclose the Service Provider's Confidential Information to the Secretary of State.

- 6.4. The Parties agree that the content of this Agreement is not Confidential Information and that either Party may publish this Agreement or a summary of its terms.

7. FOIA, Public Contracts Regulations 2015 and EIR

- 7.1. Both Parties shall:

7.1.1. assist and cooperate with one another to enable them to comply with the FOIA and the EIRs;

7.1.2. transfer to one another all Requests for Information relating to this Agreement that the other is better placed to respond to as soon as practicable and no later than two working days after receipt; and

7.1.3. give one another a copy of all information requested in the Request for Information which is in their possession or control, in the form that the Party responding to the request reasonably requires, within five working days (or other period as the responding Party may reasonably specify) of the responding Party's request.

- 7.2. The Party responding to a request shall determine in its absolute discretion whether any information relating to the Client, the Service Provider or the Services is exempt from disclosure in accordance with the FOIA and/or the EIRs.

8. Data protection

- 8.1. Each Party shall comply with all applicable requirements of the General Data Protection Regulation ((EU) 2016/679) the Data Protection Act 2018 or any other national implementing laws or regulations, which arise in connection with this Agreement.
- 8.2. 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.
- 8.3. In the event that it becomes necessary for the Service Provider to process personal data on behalf of the Client in order to deliver any part of the Services it shall not do so until appropriate measures have been agreed in writing with the Client's Data Protection Officer.
- 8.4. The contact details of the Client's Data Protection Officer are available at [REDACTED]

9. Record-keeping

- 9.1. 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 Service Provider) in connection with this Agreement. The Service Provider shall give and shall procure its subcontractors (at any remoteness from the Service Provider) shall give, the Client or its representatives access to those records as the Client may reasonably request.
- 9.2. 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 Service Provider).
- 9.3. The Service Provider shall provide such oral or written explanations as the Client or the Comptroller and Auditor General considers necessary.
- 9.4. This clause 9 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.

10. Intellectual Property

- 10.1. The Parties intend that any intellectual property rights created in the course of this Agreement shall vest in the Party whose employee created them.
- 10.2. Where any intellectual property right vests in either Party in accordance with the intention set out in clause 10.1 above, that Party shall grant an irrevocable licence to the other Party to use that intellectual property for the purposes of this Agreement.

11. Prevention of fraud and corruption

- 11.1. 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.

12. Liability

- 12.1. 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.
- 12.2. Nothing in this Agreement limits or excludes either Party's liability for:
- 12.2.1. death or personal injury caused by its negligence or that of its Staff;
 - 12.2.2. fraud or fraudulent misrepresentation by it or that of its Staff; or
 - 12.2.3. any other matter which, by law, may not be excluded or limited.

13. Commencement and Duration

- 13.1. This Agreement shall enter into force on 28th April 2021 and unless terminated earlier in accordance with clause 14, shall continue until 27th April 2022.

14. Rights to terminate

- 14.1. The Client may terminate the Service Provider's obligation to provide Services by notice in writing with immediate effect if:
- 14.1.1. the Service Provider fails to comply with any obligation under this Agreement and (if capable of remedy) has not remedied the failure within 14 days of written notice from the Client requiring it to do so;
 - 14.1.2. fraud by the Service Provider or its Staff or conduct prohibited by clause 11 occurs.
- 14.2. The Service Provider may terminate this Agreement by notice in writing to the Client with immediate effect if Client fails to comply with any obligation under this Agreement and (if capable of remedy) has not remedied the failure within 14 days of written notice from the Service Provider requiring it to do so.

15. Effect of expiry and termination

- 15.1. On termination of this Agreement the Client shall pay to the Service Provider all amounts due and payable but unpaid at the date of termination.
- 15.2. Where either Party terminates this Agreement pursuant to clause 13.1, the Client shall also pay to the Service Provider costs properly incurred and fully evidenced by the Service Provider in performing Services for which, at the date of termination, it is not yet entitled to invoice.

- 15.3. Where the Client terminates pursuant to clause 14, the Service Provider shall pay to the Client the amount of any losses incurred by the Client as a result of the termination subject to the limitation of liability provisions of this Agreement.
- 15.4. On expiry or termination of this Agreement, the Service Provider shall:
- 15.4.1. deliver to the Client any completed and uncompleted work product from the Services; and
 - 15.4.2. return to the Client any property of the Client.
- 15.5. Termination of this Agreement shall not affect any rights or liabilities of either Party that have accrued at the time of expiry or termination.

16. Assignment and sub-contracting

- 16.1. 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, except that Service Provider may use a sub-contractor for the limited purpose of performing market research.
- 16.2. In the event that the Service Provider is permitted by the Client to sub-contract the provision of any part of the Services the Service Provider shall:
- 16.2.1. be responsible for the procurement, employment and management of the sub-contractor;
 - 16.2.2. keep detailed records, and allow the Client access to such records, relating to the employment of the sub-contractor including quotations, tenders, terms of employment, records of works undertaken, invoices and payments, and;
 - 16.2.3. take on the role of the client as defined in the Construction (Design and Management) Regulations 2015.
- 16.3. Any sub-contracting by the Service Provider shall not relieve the Service Provider from its obligations under this Agreement and the Service Provider shall remain responsible for and liable to the Client for the performance of its obligations under this Agreement.

17. Force majeure.

- 17.1. Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.

18. Entire Agreement

- 18.1. This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.2. Each Party acknowledges that in entering into this Agreement it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent

or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

19. Waiver

- 19.1. 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.

20. Variation

- 20.1. No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives). The agreement may be extended by a maximum of 1 year, subject to further approvals and written confirmation by the Procurement Office.

21. Severance.

- 21.1. If any provision or part-provision of this Agreement 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 21.1 shall not affect the validity and enforceability of the rest of this Agreement.

22. Third party rights

- 22.1. 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.

23. Notices

- 23.1. Any notice to be given under this Agreement shall be in writing and may be served by personal delivery, first class recorded delivery post or, subject to clause 23.3, e-mail to the address of the other Party's Representative set out in clause 3, or such other address as either Party may from time to time notify to the other Party.
- 23.2. 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.
- 23.3. Notices under clause 13 (Commencement and Duration) may only be served by email if the original notice is then sent to the recipient by personal delivery or recorded delivery post in accordance with clause 23.1.

24. Dispute Resolution

- 24.1. If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (a "Dispute"), then the Parties shall follow the procedure set out in this clause 24.
- 24.2. Either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a "Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the Parties' Representatives shall attempt in good faith to resolve the Dispute;

- 24.3. If Parties' Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the General Counsel of the Client and the Chief Executive Officer (or equivalent) of the Service Provider who shall attempt in good faith to resolve it.
- 24.4. If the General Counsel of the Client and the Chief Executive Officer (or equivalent) of the Service Provider are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties within 7 days of the Dispute being referred for mediation, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (an "ADR notice") on the other Party, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the Parties, the mediation will start not later than 14 days after the date of the ADR notice.
- 24.5. Neither party may commence any court proceedings under clause 25.2 in relation to the whole or part of the Dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.]

25. Governing Law and Jurisdiction

- 25.1. This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.
- 25.2. Subject to clause 24 each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

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

For and on behalf of **HIGHWAYS
ENGLAND COMPANY LIMITED:**

For and on behalf of
THE REPTRAK COMPANY

[Redacted signature block for HIGHWAYS ENGLAND COMPANY LIMITED]

[Redacted signature block for HIGHWAYS ENGLAND COMPANY LIMITED]

[Redacted signature block for THE REPTRAK COMPANY]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SCHEDULE 1

THE SERVICES

The services as described below;

Project Overview

The study assesses the reputations of a number of UK Government departments and ALBs, and is conducted amongst the informed general public. HE will be measured by at least 300 individuals who are representative of the UK population.

Services:

Methodology: A quantitative online study using a panel provider.

Sample: Informed general public representative of the UK who are somewhat or very familiar with Highways England.

Sample Size: Total of 2,700 ratings - 300 ratings of HE and 300 ratings for each of eight chosen benchmarks (TfL, DfT, HS2, DVLA, CrossRail, National Grid, Network Rail, Transport Scotland).

Deliverables:

Final Report and Face-to-face or telephone presentation of results, which include:

- Levels of familiarity
- Overall organisation reputation
- Detailed Dimension performance
- Levels of negative, 'fence sitters', and positive support
- Demographic analysis
- Key Driver analysis
- Comparisons with chosen benchmarks and access to past, time series data
- Additional questions around trust in organisations, value for money and delivery, and sustainability ratings. Final questionnaire to be approved.

To include additionally;

- 1 Private Sector benchmark (e.g. AA – TBC)
- 5 Strategy Questions
- Reputation risk model – 6 questions

[illegible]
