

TERMS AND CONDITIONS OF CONTRACT FOR THE PURCHASE OF SERVICES BY HIGHWAYS ENGLAND

THIS AGREEMENT is dated 11th May 2020

BETWEEN

HIGHWAYS ENGLAND COMPANY LIMITED (company number 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ ("Highways England"); and

The MILES CONSULTANCY LTD (TMC) (company number 04679336) whose registered office is at TMC House Spring Farm Business Park, Moss Lane, Minshull Vernon, Cheshire, CW1 4RJ (the "Supplier")

AGREED AS FOLLOWS

1 Interpretation

1.1 In these terms and conditions:

"Agreement"	means the contract between (i) Highways England and (ii) the Supplier constituted by the Supplier's acceptance of the Award Letter
"CEDR"	means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
"Date of Provision"	means that date by which the Services must be Provided to Highways England, as specified in the Purchase Order.
"Data Protection Legislation"	means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018;
"Deliverables"	all documents, products and materials developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications;
"EIRs"	means the Environmental Information Regulations 2004 (SI 2004/3391);
"FOIA"	means the Freedom of Information Act 2000;
"Information"	has the meaning given under section 84 of the FOIA;
"Party"	the Supplier or Highways England (as appropriate) and "Parties"

shall mean both of them;

"Price"	means the Price for the Services as specified in the "Highways England Fuel Card Reporting Services Contract Price List" t;
"Provide"	means performance of the Services by the Supplier for Highways England and Provided" and "Provided" and "Provision" shall be construed accordingly.
"Award Letter"	means the document entitled as such issued by Highways England to the Supplier;
"Purchase Order Number"	means Highways England's unique number relating to the order for Services to be supplied by the Supplier to Highways England in accordance with the terms of the Agreement;
"Request for Information"	has the meaning set out in the FOIA or the EIRs as relevant (where the meaning set out for the term "request" shall apply);
"Specification"	means the specification for the Services to be supplied by the Supplier to Highways England (including as to quantity, description and quality) as specified in the Purchase Order;
"Services"	means the Services to be supplied by the Supplier to Highways England under the Agreement;
"Staff"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Agreement;
"Staff Vetting Procedures"	means vetting procedures that accord with good industry practice or, where applicable, Highways England's procedures for the vetting of personnel as provided to the Supplier from time to time;
"Supplier"	means the person named as Supplier in the Purchase Order;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

- 1.2.5 the word 'including' shall be understood as meaning 'including without limitation'.

2 Basis of Agreement

- 2.1 The Award Letter constitutes an offer by Highways England to purchase the Services subject to and in accordance with the terms and conditions of the Agreement. The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by Highways England of a copy of the Purchase Order countersigned by the Supplier within 5 Working Days of the date of the Award Letter.

3 Supply of services

- 3.1 The Supplier shall supply the Services to Highways England from the Services Start Date in accordance with the Contract.
- 3.2 In supplying the Services, the Supplier shall:
- 3.2.1 perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - 3.2.2 co-operate with Highways England in all matters relating to the Services, and comply with all instructions of Highways England;
 - 3.2.3 appoint or, at the written request of Highways England, replace without delay a manager, who shall have authority to contractually bind the Supplier on all matters relating to the Services;
 - 3.2.4 only use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
 - 3.2.5 ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in the Contract;
 - 3.2.6 ensure that the Services and Deliverables shall conform in all respects with the specification and that the Deliverables shall be fit for any purpose that Highways England expressly or impliedly makes known to the Supplier;
 - 3.2.7 provide all equipment, tools, vehicles and other items required to provide the Services;
 - 3.2.8 ensure that the Deliverables, and all Services, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
 - 3.2.9 comply with all applicable laws, statutes, regulations from time to time in force;
 - 3.2.10 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of Highways England's premises from time to time and are notified to the Supplier;
 - 3.2.11 not do or omit to do anything which may cause Highways England to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business; and
 - 3.2.12 notify Highways England in writing immediately upon the occurrence of a change of control of the Supplier.

4 Price, Payment and Recovery of Sums Due

- 4.1 The Price for the Services shall be as set out in the Purchase Order and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by Highways England, the Price shall include every

cost and expense of the Supplier directly or indirectly incurred in connection with the supply of the Services.

- 4.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. Highways England shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 4.3 Following Delivery of the Services, the Supplier shall invoice Highways England as specified in the Agreement. Each invoice shall include such supporting information required by Highways England to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 4.4 Highways England shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the purposes of this clause 4.4 an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 4.5 In consideration of the supply of the Services by the Supplier, Highways England shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number.
- 4.6 If Highways England fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 4.4 after a reasonable time has passed.
- 4.7 If there is a dispute between the Parties as to the amount invoiced, Highways England shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums within 90 days in accordance with clause 16.3. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 4.8 If a payment of an undisputed amount is not made by Highways England by the due date, then Highways England shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.9 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
 - 4.9.1 provisions having the same effects as clauses 4.3 to 4.7 of this Agreement; and
 - 4.9.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effects as 4.3 to 4.8 of this Agreement.
 - 4.9.3 In this clause 4.8, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from Highways England in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 4.10 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to Highways England in respect of any breach of the Agreement), that sum may be deducted unilaterally by Highways England from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract between Highways

England and the Supplier. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against Highways England in order to justify withholding payment of any such amount in whole or in part.

5 Cancellation

- 5.1 Highways England shall have the right to cancel the order for the Services, or any part of the Services, which have not yet been Provided to Highways England. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, Highways England shall pay such Price or that part of the Price for Services which have been Provided to Highways England or, on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials which the Supplier has purchased to fulfil the order for the Services and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt Highways England shall not be liable for any loss of anticipated profits or any consequential loss.

6 Provision of the Services

- 6.1 The Supplier shall Provide the Services to Highways England on or by the Date of Provision.
- 6.2 Where (i) the Supplier fails to Provide the Services or part of the Services or (ii) the Services or part of the Services do not comply with the provisions of clause 3, then without limiting any of its other rights or remedies implied by statute or common law, Highways England shall be entitled to:
- 6.2.1 terminate the Agreement;
 - 6.2.2 require the Supplier to provide a full refund of the price of the rejected Services (if paid);
 - 6.2.3 buy the same or similar Services from another supplier and recover any expenses incurred in respect of buying the Services from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

7 Staff

- 7.1 If Highways England reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
- 7.1.1 refuse admission to the relevant person(s) to Highways England's premises;
 - 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by Highways England to the person removed is surrendered,
- and the Supplier shall comply with any such notice.
- 7.2 The Supplier shall:
- 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures and if requested, comply with Highways England's Staff Vetting Procedures as supplied from time to time;
 - 7.2.2 if requested, provide Highways England with a list of the names and addresses (and any other relevant information) of all persons who may require admission to Highways England's premises in connection with the Agreement; and

7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by Highways England.

8 Assignment and Sub-Contracting

- 8.1 The Supplier shall not without the written consent of Highways England assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. Highways England may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal.
- 8.2 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 8.3 Where Highways England has consented to the placing of sub-contracts, the Supplier shall, at the request of Highways England, send copies of each sub-contract, to Highways England as soon as is reasonably practicable.
- 8.4 Highways England may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

9 Intellectual Property and Indemnity

- 9.1 The Supplier grants Highways England a perpetual, royalty-free, irrevocable, non-exclusive licence (with the right to sub-licence) to use all intellectual property rights in the Services or in any materials accompanying the Services to the extent that it is necessary to fulfil its obligations under this Agreement.
- 9.2 The Supplier shall indemnify, and keep indemnified, Highways England in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by Highways England as a result of or in connection with any claim made against Highways England for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.
- 9.3 Highways England shall promptly notify the Supplier of any infringement claim made against it relating to any Services and, subject to any statutory obligation requiring Highways England to respond, shall permit the Supplier to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. Highways England shall give the Supplier such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.

10 Governance and Records

- 10.1 The Supplier shall:
 - 10.1.1 attend progress meetings with Highways England at the frequency and times specified by Highways England and shall ensure that its representatives are suitably qualified to attend such meetings; and
 - 10.1.2 submit progress reports to Highways England at the times and in the format specified by Highways England.
- 10.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it, and all payments made by

Highways England. The Supplier shall on request afford Highways England or Highways England's representatives such access to those records as may be reasonably requested by Highways England in connection with the Agreement.

11 Confidentiality, Transparency and Publicity

11.1 Subject to clause 11.2, each Party shall:

11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

11.2.2 to its auditors or for the purposes of regulatory requirements;

11.2.3 on a confidential basis, to its professional advisers;

11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

11.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

11.2.6 where the receiving Party is Highways England:

(a) on a confidential basis to the employees, agents, consultants and contractors of Highways England;

(b) on a confidential basis to the Secretary of State for Transport;

(c) to the extent that Highways England (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

(d) in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on Highways England under this clause 11.

11.3 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for Highways England to publish the Agreement in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOIA or the EIRs redacted) including any changes to the Agreement agreed from time to time. Highways England may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions

of the FOIA or the EIRs.

- 11.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of Highways England.

12 Freedom of Information

- 12.1 The Supplier acknowledges that Highways England is subject to the requirements of the FOIA and the EIRs and shall:

12.1.1 provide all necessary assistance and cooperation as reasonably requested by Highways England to enable Highways England to comply with its obligations under the FOIA and the EIRs;

12.1.2 transfer to Highways England all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

12.1.3 provide Highways England with a copy of all Information belonging to Highways England requested in the Request for Information which is in its possession or control in the form that Highways England requires within 5 Working Days (or such other period as Highways England may reasonably specify) of Highways England's request for such Information; and

12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by Highways England.

- 12.2 The Supplier acknowledges that Highways England may be required under the FOIA or the EIRs to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances Highways England shall, in accordance with any relevant guidance issued under the FOIA or the EIRs, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure

- 12.3 Notwithstanding any other provision in the Agreement, Highways England shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the EIRs.

13 Protection and Security of Data

- 13.1 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data Protection Legislation which arise in connection with the Agreement.

- 13.2 When handling Highways England data, the Supplier shall ensure the security of the data is maintained in line with the security requirements of Highways England as notified to the Supplier from time to time.

14 Liability

- 14.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by Highways England if and to the extent that it is caused by the negligence or wilful misconduct of Highways England or by breach by Highways England of its obligations under the Agreement.

- 14.2 Subject always to clause 14.3

14.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or

damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 200% of the Price paid or payable to the Supplier; and

14.2.2 except in the case of claims arising under clauses 9.12 and 18.3, in no event shall either Party be liable to the other Party for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement shall be construed to limit or exclude 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;

14.3.3 breach of any obligation as to title implied by section 12 of the Sale of Services Act 1979 or section 2 of the Supply of Services and Services Act 1982; or

14.3.4 any other matter which, by law, may not be excluded or limited.

15.4 The Supplier's liability under the indemnity in clauses 10.2 and 18.3 shall be unlimited.

15 Force Majeure

15.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 30 days, either Party may terminate the Agreement by written notice to the other Party.

16 Termination

16.1 Without prejudice to any other right or remedy it might have, Highways England may terminate the Agreement in whole or in part before Delivery or after Delivery (where only part of Services have been Provided) by written notice to the Supplier with immediate effect if the Supplier:

16.1.1 (without prejudice to clause 16.1.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

16.1.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

16.1.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

16.1.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

- 16.1.5 breaches the provisions of clauses 7.2, 11, 12, 13, 17 and 19;
 - 16.1.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.1.6) in consequence of debt in any jurisdiction; or
 - 16.1.7 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 16.2 The Supplier shall notify Highways England as soon as practicable of any change of control as referred to in clause 16.1.4 or any potential such change of control.
- 16.3 In addition to the Supplier's statutory rights, the Supplier may terminate the Agreement by written notice to Highways England if Highways England has not paid any undisputed amount within 90 days of it falling due.
- 16.4 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under clauses 2,3,4, 7, 10, 10.2, 11, 12, 13, 14, 16.5, 17.3, 18.3, 19 and 21.7 and any other term or condition of the Agreement that either expressly or by implication has effect after termination.
- 16.5 Upon termination or expiry of the Agreement, the Supplier shall:
- 16.5.1 give all reasonable assistance to Highways England and any incoming supplier of Services; and
 - 16.5.2 return all requested documents, information and data to Highways England as soon as reasonably practicable.
- 17 Compliance**
- 17.1 The Supplier shall promptly notify Highways England of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. Highways England shall promptly notify the Supplier of any health and safety hazards which may exist or arise at Highways England's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 17.2 The Supplier shall:
- 17.2.1 comply with the reasonable requirements of Highways England's security arrangements;
 - 17.2.2 comply with all Highways England's health and safety measures;
 - 17.2.3 notify Highways England immediately in the event of any incident occurring in the performance of its obligations under the Agreement on Highways England's premises where that incident causes any personal injury or damage to property which could give rise to personal injury;
 - 17.2.4 perform its obligations under the Agreement in accordance with all applicable equality Law and Highways England's equality and diversity policy as provided to the Supplier from time to time;
 - 17.2.5 take all reasonable steps to secure the observance of clause 17.2.4 by all Staff; and
 - 17.2.6 supply the Services and any packaging in accordance with Highways England's environmental policy as provided from time to time.

17.3 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

17.3.1 the Official Secrets Acts 1911 to 1989; and

17.3.2 section 182 of the Finance Act 1989.

18 Prevention of Fraud and Corruption

18.1 The Supplier shall not offer, give, or agree to give anything, 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 the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

18.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify Highways England immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

18.3 If the Supplier or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including Highways England) Highways England may:

18.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by Highways England resulting from the termination, including the cost reasonably incurred by Highways England of making other arrangements for the supply of the Services and any additional expenditure incurred by Highways England throughout the remainder of the Agreement; or

18.3.2 recover in full from the Supplier any other loss sustained by Highways England in consequence of any breach of this clause.

19 Compliance With Anti-Slavery And Human Trafficking Laws

19.1 In performing its obligations under the Agreement, the Supplier shall:

19.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015; and

19.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

19.1.3 include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 19.

19.1.4 notify Highways England as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.

19.1.5 maintain a complete set of records to trace the supply chain of all Services provided to Highways England in connection with this agreement; and permit Highways England and its third-party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 19.

19.2 The Supplier represents and warrants that at the date of the Agreement it not has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence

or alleged offence of or in connection with slavery and human trafficking.

20 Dispute Resolution

- 20.1 If a dispute arises out of or in connection with the Agreement or the performance, validity or enforceability of it (a "Dispute"), then the Parties shall follow the procedure set out in this clause 20.
- 20.2 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, Highways England's Procurement Officer and the Supplier's Customer Services Manager shall attempt in good faith to resolve the Dispute
- 20.3 If Highways England's Procurement Officer and the Supplier's Customer Services Manager are for any reason unable to resolve the Dispute within 10 Working Days of service of the Dispute Notice, the Dispute shall be referred to Highways England's Commercial and Procurement Director and the Supplier's Chief Executive Officer who shall attempt in good faith to resolve it.
- 20.4 If Highways England's Commercial and Procurement Director and the Supplier's Chief Executive Officer are for any reason unable to resolve the Dispute within 10 Working 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 10 Working Days of the mediation arising the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (the "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 20 Working Days after the date of the ADR notice.
- 20.5 Neither Party may commence any court proceedings under clause 23 in relation to the whole or part of the Dispute until 20 Working Days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 20.6 If the Dispute is not resolved within 50 Working Days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 50 Working Day period, or the mediation terminates before the expiry of that 50 Working Day period, the Dispute shall be finally resolved by the English courts in accordance with clause 23.

21 General

- 21.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 21.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 21.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 21.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

- 21.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 21.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 21.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 21.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

22 Notices

- 22.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded delivery post or, subject to clause 22.3, e-mail to the address of the relevant Party set out in the Purchase Order, 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 served as above shall be deemed served on the Working Day of delivery provided 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 Provided when sent unless an error message is received.
- 22.3 Notices under clauses 15 (Force Majeure), 16 (Termination) and 20 (Dispute Resolution) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 22.1.

23 Governing Law and Jurisdiction

- 23.1 The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.