

Dated

2021

**AGREEMENT FOR PROVISION OF WEB STORE FOR HIGHWAYS ENGLAND
BRANDED MATERIALS**

BETWEEN

NATIONAL HIGHWAYS

AND

LIVE GROUP LTD



Dated

2021

BETWEEN

1. **NATIONAL HIGHWAYS** (company number 09346363), whose registered office is Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ (“the **Client**”); and
2. **LIVE GROUP LTD** (company number 01201913) whose registered office is at Unit 2-3 Horace Road, Kingston Upon Thames, KT1 2SZ (“the **Service Provider**”)

AGREED AS FOLLOWS

1. **Interpretation**

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

CEDR	the Centre for Dispute Resolution whose address is 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;
Off-Payroll Working Regime	The arrangements described in Chapter 10 of Part 2 of Income Tax (Earnings and Pensions) Act 2003
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 Schedule 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 and the Service Provider shall be represented by the individuals identified in Schedule 3:

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 and to the address 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; or
 - 6.2.3. 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 and EIRs

- 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 UK General Data Protection Regulation ((EU) 2016/679) (as defined in section 3(10) of the Data Protection Act 2018), 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 UK General Data Protection Regulation 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 DataProtectionAdvice@highwaysengland.co.uk

9. Record-keeping and the Off Payroll Working Regime

- 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.
- 9.5. Where the Service Provider is supplying the services of an individual or group of individuals to the Client then for the purposes of Chapter 10 of Part 2 of

Income Tax (Earnings and Pensions) Act 2003 (the off-payroll working regime) the Service Provider will take all reasonable steps to prevent that individual or those individuals being classified as employees of the Client.

- 9.6. Without prejudice the generality of clause 9.5 in its employment contract with the individual or individuals assigned to the Client the Service Provider will provide for those individuals to be capable of substitution by other individuals, include a right for them to work for other clients and confirm that the Service Provider (as opposed to the Client) is responsible for any disciplinary process involving the individuals and for conducting their annual staff appraisals.
- 9.7. For the avoidance of doubt there is no intention for this Agreement to operate so as to create a relationship of employer and employee between the Client and the individual or individuals assigned by the Service Provider to provide the Services.

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 the date of this Agreement and unless terminated earlier in accordance with clause 14, shall continue until 31 March 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.

14.1.3. the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;

14.1.4. the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;

14.1.5. the Service Provider applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

14.1.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Service Provider (being a company, limited liability partnership or partnership);

14.1.7. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Service Provider (being a company, partnership or limited liability partnership);

14.1.8. the holder of a qualifying floating charge over the assets of that Service Provider (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

14.1.9. a person becomes entitled to appoint a receiver over all or any of the assets of the Service Provider or a receiver is appointed over all or any of the assets of the Service Provider or;

14.1.10. the Service Provider's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

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 15.1, the Service Provider shall pay to the Client the amount of any losses incurred by the Client as a result of the termination.
- 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.
- 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).

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 Schedule 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 personal delivery takes place before 5.00pm on a working day. Otherwise delivery shall be deemed to occur on the next working day. Notices served by first class recorded delivery

post shall be deemed to be received on the second working day after being posted. An email shall be deemed delivered when sent unless an error message is received.

- 23.3. Notices under clause 13 (Commencement and Duration) or an ADR Notice under clause 24.4 may only be served by email if the original notice is then sent to the recipient by personal delivery or first class 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 27.2 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. Publication of Contracts

- 25.1. The Service Provider acknowledges that the Client is obliged to publish information relating to this Agreement in accordance with Procurement Policy Note 01/17 entitled "Update to Transparency Principles" published on 16th February 2017¹ except to the extent that any information in it is exempt from disclosure pursuant to the FOIA or the EIRs. The Client shall consult with the

¹ <https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>

Service Provider before deciding whether information is exempt, but the Contractor shall acknowledge that the Client has the final decision.

26. Energy Efficiency

- 26.1. In providing the Services the Service Provider shall comply with Procurement Policy Note 07/14 (“PPN 07/14”) entitled “Implementing Article 6 of the Energy Efficiency Directive” published on 3rd June 2014².
- 26.2. If required by the Client the Service Provider shall demonstrate to the Client how any new products purchased by the Service Provider for use partially or wholly in providing the Services comply with the requirements of PPN 07/14.
- 26.3. The Service Provider shall include in the conditions of contract for each subcontractor it engages a requirement for the sub-contractor to comply with PPN 07/14.

27. Governing Law and Jurisdiction

- 27.1. 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.
- 27.2. 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 **National
Highways**

For and on behalf of **LIVE GROUP LTD**

.....

(authorised signatory)

.....

(authorised signatory)

² <https://www.gov.uk/government/publications/procurement-policy-note-0714-implementing-energy-efficiency-directive-article-6>

.....
(print name)

Redacted per Freedom of Information
Act 2000, S40(2)
(print name)

.....
(job title)

Account Director
(job title)

SCHEDULE 1

THE SERVICES

Further to a contract awarded in 2018 for the provision of a web store for Highways England branded materials, this service agreement is for the management and distribution of the remaining stock until 31 March 2022.

Further instructions on management of any remaining stock will be agreed prior to the expiry of this agreement to allow a suitable exit from the arrangement.

SCHEDULE 2

THE CHARGES AND INVOICING

National Highways will pay for actual costs incurred by the service provider in the management of the web store and residual stock up to a limit of £12,000 excluding VAT.

In the event that the limit is likely to be exceeded a further agreement will be required from National Highways.

Monthly invoices are to be sent to

Invoices must be submitted electronically to Invoices@highwaysengland.co.uk

1. When you report the value of completed work each month we will give you a receipt number.
2. Please quote the purchase order number and the monthly receipt number on your invoice to ensure prompt payment.
 - a. Note: quoting the purchase order number is a mandatory requirement; quoting the receipt number will aid processing but is not a requirement. Invoices without a valid purchase order will be rejected.
3. Invoices must be submitted to the email address above and be in PDF format (except where noted in point 4).
4. If you scan the original invoice/credit note, please ensure these scanned images are in black and white, in TIFF format and ideally scanned at 600 DPI, although a minimum of 300 DPI can also be used.
5. Be aware that any text in the body of your email, or attachments submitted in file formats other than those listed above will not be read by anyone.

Invoices shall quote the following:

- Purchase Order Number
- Work undertaken and the applicable rates/charges

SCHEDULE 3
PARTIES' REPRESENTATIVES

For the purposes of this Agreement: -

the Client shall be represented by:

Redacted per Freedom of Information Act 2000, S40(2)

Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4GA

Redacted per Freedom of Information Act 2000, S40(2)

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

and

the Service Provider shall be represented by:

Redacted per Freedom of Information Act 2000, S40(2)

Units 2-3, Princes Mews, Horace Road, Kingston, KT1 2SZ

Redacted per Freedom of Information Act 2000, S40(2)

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