

Highways England Company Limited

Area 9

Asset Delivery (AD)

Scope

Annex 25B

Form of Novation
(Old Contractor to New Contractor)

CONTENTS AMENDMENT SHEET

Issue No.	Revision No.	Amendments	Initials	Date
0	0	Tender Issue	AJP	30/06/2021

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HIGHWAYS ENGLAND COMPANY LIMITED
as Client

[●]
as New Contractor

[●]
as Old Contractor

DEED OF NOVATION

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

DATED [●]

Parties

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

Background

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

1. Definitions and Interpretation

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

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

“**Service**” means the services to be carried out by the Contractor pursuant to the Contract.
- 1.2 The clause and paragraph headings in this deed are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- 1.3 Words in this deed denoting the singular include the plural meaning and vice versa.
- 1.4 References in this deed to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments and regulations made pursuant to it.

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

2. Novation

- 2.1 The Old Contractor and the Client release and discharge each other from the further performance of their respective obligations under the Contract and the Client acknowledges and accepts the liability of the New Contractor in place of the liability of the Old Contractor under the Contract
- 2.2 The New Contractor undertakes to be bound to the Client by the terms of the Contract in every way as if the New Contractor was and always had been a party to the Contract in place of the Old Contractor.
- 2.3 The Client acknowledges and warrants to the New Contractor that it has duly observed and performed and will continue duly to observe and perform all its obligations under the Contract.

3. New Contractor's Undertakings

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

4. Payment of Sums Due

- 4.1 The Client and the Old Contractor agree that the total amount to be paid by the Client to the Old Contractor for the Service provided under the Contract prior to the date of this deed is £[●]. The Old Contractor acknowledges that the Client has paid the sum of £[●] prior to the date of this deed. The balance of £[●] shall be invoiced by the Old Contractor to the Client and paid by the Client in accordance with the Contract.
- 4.2 The New Contractor acknowledges that any payment made by the Client to the Old Contractor in respect of the Service (whether before or after the date of this deed) shall be treated as having been made to the New Contractor and that the Client's payment obligation under the Contract shall to that extent be treated as discharged.

5. Notices

- 5.1 Any notice or other communication required under this deed shall be given in writing and is to be delivered personally (which includes delivery by courier) or sent by pre-paid recorded or special delivery post to the party concerned at its

address set out in this deed or to such other addresses as may be notified by such party for the purposes of this clause.

5.2 Any notice given pursuant to this clause will be deemed to have been served as follows:

- if delivered personally, at the time of delivery; and
- if sent by recorded or special delivery post, 48 hours after being delivered into the custody of the postal authorities but excluding Saturdays, Sundays and public and bank holidays in England.

5.3 In proving service, it will be sufficient to prove that personal delivery was made or that the envelope containing the notice was properly addressed and delivered into the custody of the postal authorities as a pre-paid recorded or special delivery letter.

6. Governing Law and Disputes

6.1 This deed and any non-contractual obligations arising out of or in connection with it shall be governed by English law.

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

Execution Page

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

OPTION 1a [execution by Highways England under seal]

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

Director

Director/Secretary

OPTION 1b [execution by Highways England under seal]

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

Authorised Signatory

Authorised Signatory

OPTION 2a

Executed as a deed by **HIGHWAYS ENGLAND COMPANY LIMITED** acting by:

Director

Director/Secretary

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

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

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