

Highways England Company Limited

Area 9

Asset Delivery (AD)

Scope

Annex 25A

Form of Novation

(Old Client to New Client)

CONTENTS AMENDMENT SHEET

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

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HIGHWAYS ENGLAND COMPANY LIMITED
as Old Client

[•]
as New Client

[•]
as 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 “**Old Client**”),
- 2) **[insert details of replacement authority]** (the “**New Client**”)
- 3) **[●]** (company no [●]) whose registered office is at [●] (the “**Contractor**”)

Background

- A) By the Contract, the Client has employed the Contractor to Provide the Service.
- B) The Old Client has agreed (with the consent of the Contractor) to transfer all its rights and obligations under the Contract to the New Client and the Contractor has agreed to accept the liability of the New Client in place of the liability of the Old Client 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 Contractor (2) (including any further agreement varying or supplementing the Contract) under which the 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 Client and the Contractor release and discharge each other from the further performance of their respective obligations under the Contract and the Contractor acknowledges and accepts the liability of the New Client in place of the liability of the Old Client under the Contract.
- 2.2 The Contractor undertakes to be bound to the New Client by the terms of the Contract in every way as if the New Client was and always had been a party to the Contract in place of the Old Client.
- 2.3 The Contractor acknowledges and warrants to the New Client that it has duly observed and performed and will continue duly to observe and perform all its obligations under the Contract.

3. New Client's Undertakings

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

4. Payment of Sums Due

- 4.1 The Contractor and the Old Client agree that the total amount to be paid by the Old Client to the Contractor for the Service provided under the Contract prior to the date of this deed is £[●]. The Contractor acknowledges that the Old Client has paid the sum of £[●] prior to the date of this deed. The balance of £[●] shall be invoiced by the Contractor to the Old Client and paid by the Old Client in accordance with the Contract.
- 4.2 The Contractor and the New Client agree that the New Client shall be solely responsible (to the exclusion of the Old Client) for payment of all sums due to the Contractor under the Contract for any Service provided after the date of this deed.
- 4.3 Where, under Clause 2.2 above or under any other contract between the New Client and the Contractor, any sum of money is recoverable from or payable by the Contractor to the New Client, such sum may be deducted from or reduced by the amount of any sum then due or which may at any time become due from the New Client to the Contractor under Clause 4.2 above or under any other contract with any Department or Office of Her Majesty's Government.¹

¹ Include only if the New Client is a Department or Office of Her Majesty's Government.

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 [NEW CLIENT] in the presence of:	
	Authorised Signatory
	Authorised Signatory

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