

DATED

2020

**FUNDING AGREEMENT RELATING TO
D2N2 ULTRA LOW EMISSION VEHICLE (ULEV) EXPERIENCE**

between

HIGHWAYS ENGLAND COMPANY LIMITED

and

NOTTINGHAM CITY COUNCIL

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THIS DEED is dated

2020

PARTIES

- (1) **HIGHWAYS ENGLAND COMPANY LIMITED** (Company Number 9346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ (“**Highways England**”)
and
- (2) **NOTTINGHAM CITY COUNCIL** whose principal address is at Loxley House, Station Street, Nottingham. NG2 3NG (the “**Recipient**”).

BACKGROUND

- (A) Highways England is the strategic highways company for the sections of highway known as the M1, A38, A453 and A52 in Derbyshire and Nottinghamshire.
- (B) The Secretary of State is empowered by section 17 of the Infrastructure Act 2015 to provide financial assistance to any person for the promotion or improvement of transport services in the form of grants. Highways England is authorised by its Articles of Association to pay grants on behalf of the Secretary of State.
- (C) The Recipient wishes to undertake the Project described in Schedule 1 of this Funding Agreement and Highways England has agreed to provide funding in respect of the Project on the terms and conditions set out in this Funding Agreement.
- (D) These terms and conditions are intended to ensure that the Funding is used by the Recipient for the purpose for which it is awarded.

AGREED TERMS

1. DEFINITIONS

In this Funding Agreement the following terms shall have the following meanings:

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Commencement Date: the date of this Agreement

Data Protection Legislation: 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); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and references in clause 11.2 of this Funding Agreement to “Personal Data” and “Processor” will be interpreted in accordance with the Data Protection Legislation.

Funding: the sum of two million, six hundred and ninety thousand pounds (£2,690,000) to be paid to the Recipient in accordance with this Funding Agreement.

Funding Claim the grant funding advice and supporting evidence to be issued by the Recipient to Highways England.

Funding Period: the period for which the Funding is awarded starting on the Commencement Date and ending on 31 March 2023.

Intellectual Property Rights: all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions.

Know-How: information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale.

Prohibited Act: means:

- (a) offering, giving or agreeing to give to any servant of Highways England any gift or consideration of any kind as an inducement or reward for:
 - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Funding Agreement or any other contract with Highways England; or
 - (ii) showing or not showing favour or disfavour to any person in relation to this Funding Agreement or any other contract with Highways England;
- (b) entering into this Funding Agreement or any other contract with Highways England where a commission has been paid or has been agreed to be paid by the Recipient or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to Highways England;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Funding Agreement or any other contract with Highways England; or
- (d) defrauding or attempting to defraud or conspiring to defraud Highways England.

Project: the project described in Schedule 1.

Recipient Funding: the sums set out in Schedule 3 to be paid by the Recipient to support this Project.

Senior Representatives: the Commercial Support Services Director of Highways England and the chief executive (or equivalent) of the Recipient.

Test Success Criteria: the criteria to be achieved in order for an instalment of the funding to be payable as more particularly described in Schedule 2.

Tolerance: The percentage stated in column 3 of Schedule 3 by which the Recipient may add to items of expenditure in Column 1 before seeking prior written agreement of Highways England to exceed such expenditure items.

2. PURPOSE OF FUNDING

2.1 The Recipient shall use the Funding only for the delivery of the Project and in accordance with the terms and conditions set out in this Funding Agreement. The Funding shall not be used for any other purpose without the prior written agreement of Highways England.

2.2 The Recipient shall not make any significant change to the Project without Highways England's prior written agreement.

2.3 Where the Recipient intends to apply to a third party for other funding for the Project, it will notify Highways England in advance of its intention to do so and, where such funding is obtained, it will provide Highways England with details of the amount and purpose of that funding. The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that Highways England is funding in full under this Funding Agreement. For the avoidance of doubt this clause shall not prevent the Recipient for utilising matched funding where applicable for the Project.

3. PAYMENT OF FUNDING

3.1 Subject to clause 12 Highways England shall pay the Funding to the Recipient in accordance with Schedule 2, subject to the necessary funds being available, in advance of the Recipient undertaking the work associated with the Project and its Milestones. The Recipient agrees and accepts that payments of the Funding can only be made to the extent that Highways England has available funds.

3.2 The Recipient shall issue a Funding Claim in advance of expenditure being incurred and the amount claimed shall be payable by Highways England only if Highways England is satisfied that the Recipient has supplied sufficient evidence that the amount claimed will be properly incurred in the course of delivering the Project.

3.3 No Funding Claim shall be paid unless and until:

- (a) the Recipient has completed and submitted the necessary Highways England "purchase to pay" forms to enable an entry in respect of the Recipient to be included in Highways England's payment system and

Highways England has established the Recipient upon its payment system; and

- (b) Highways England is satisfied that the amount claimed has been used for proper expenditure in the delivery of the Project.

3.4 Exceptionally Highways England may be willing to pay a Funding Claim in anticipation of expenditure on the Project being incurred by the Recipient. Payment of a Funding Claim in this way by Highways England will be at the discretion of Highways England and the subject of a separate agreement between Highways England and the Recipient.

3.5 Subject to clauses 3.2 and 3.3, Highways England shall pay any valid undisputed Funding Claim within thirty (30) days of receipt of the valid undisputed invoice.

3.6 The Recipient shall submit any Funding Claim payment and/or a credit note to Highways England's Financial Services Payments Team in an electronic format to the email address at invoices@highwaysengland.co.uk.

3.7 The Recipient must secure the best value for money in all purchases of goods, services and works for the purpose of the Project. If applicable the Recipient must take all reasonable steps to comply with the requirements of the European Union procurement directives and Treaty obligations in relation to any expenditure made using the Funding. In relation to the supply of goods and services these requirements are implemented by the Public Contracts Regulations 2015 (SI 2015/102), the Utilities Contracts Regulations 2016 (SI 2016/274) and the Concession Contracts Regulations 2016 (SI 2016/273) and are subject to financial thresholds specified by reference to the value of the transaction. Although these regulations apply primarily to public sector bodies they may also apply to the procurement of goods and services by the private sector where more than 50 per cent of the consideration is contributed by a public sector body, such as Highways England.

3.8 The amount of the Funding shall not be increased in the event of any overspend by the Recipient in its delivery of the Project.

3.9 The Recipient shall promptly repay to Highways England any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Funding monies have been paid in error before all conditions attaching to the Funding have been complied with by the Recipient.

4. USE OF FUNDING

4.1 The Funding shall be used by the Recipient for the delivery of the Project in accordance with the agreed budget set out in Schedule 3. For the avoidance of doubt, and unless the prior written agreement of Highways England has been secured otherwise, the amount of the Funding that the Recipient may spend:

- (a) on any item of expenditure listed in column 1 of Schedule 3 shall not exceed the corresponding aggregated sum of money in column 2 and the tolerance listed in column 3; and
 - (b) in total shall not exceed the Total (Capital funding) listed in column 1 of Schedule 3.
- 4.2 Where the Recipient has obtained funding from a third party in relation to its delivery of the Project (including without limitation funding for associated administration and staffing costs), the amount of such funding shall be included in the budget in Schedule 3 together with a clear description of what that funding shall be used for.
- 4.3 The Recipient shall not use the Funding to:
 - (a) make any payment to members of its governing body;
 - (b) purchase buildings or land;
 - (c) pay for activities of a political or exclusively religious nature;
 - (d) pay for works or activities that any person has a statutory duty to undertake;
 - (e) pay for any expenditure commitments of the Recipient entered into before the Commencement Date;
 - (f) pay for depreciation, amortisation or impairment of fixed assets;
 - (g) pay input VAT reclaimable by the funding recipient from H.M. Revenue & Customs;
 - (h) make interest payments or service charge payments for finance leases;
 - (i) provide gifts or entertaining; or
 - (j) pay statutory fines, criminal fines or penaltiesunless this has been approved in writing by Highways England.
- 4.4 The Recipient shall not spend any part of the Funding on the delivery of the Project after the Funding Period.
- 4.5 The Recipient shall ensure that any contract (at any stage of remoteness from the Recipient) that is used to deliver activities associated with the Funding shall include a term that a contractor (at any stage of remoteness from the Recipient) shall be paid within thirty (30) days of receipt of a valid undisputed invoice.
- 4.6 Should any part of the Funding remain unspent at the end of the Funding Period, the Recipient shall ensure that any unspent monies are returned to Highways England.
- 4.7 The Recipient shall:

- (a) keep Highways England apprised on progress on achieving the Milestones and whether the Milestone Dates will be achieved, and if any Milestone Date will not be achieved by the date stated in Schedule 2, when the Milestone is to be achieved;
- (b) within 7 days of the achievement of all the Test Success Criteria for the relevant Milestone, confirm the date the achievement of the Milestone; and
- (c) upon completion of any Milestone, supply sufficient evidence (as described in Schedule 2) that the Test Success Criteria for the Milestone has been achieved.

5. ACCOUNTS AND RECORDS

- 5.1 The Funding shall be shown in the Recipient's accounts as a restricted fund and shall not be included under general funds.
- 5.2 The Recipient shall keep:
 - (a) separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Funding monies received by it; and
 - (b) all invoices, receipts, and accounts and any other relevant documents and information obtained or prepared by the Recipient or any subcontractor (at any stage of remoteness from the Recipient) in connection with this Funding Agreement for a period of twelve (12) years expiry or termination of this Funding Agreement.
- 5.3 At Highways England's request, the Recipient shall permit Highways England and/or the Comptroller and Auditor General (whether under section 6 of the National Audit Act 1983 or otherwise) to examine the Recipient's accounts, records and documents held or controlled by the Recipient or any subcontractor (at any stage of remoteness from the Recipient), that relate to the expenditure of the Funding and shall have the right to take copies of such accounts and records.
- 5.4 The Recipient shall provide such oral or written explanations as Highways England or the Comptroller and Auditor General considers necessary.
- 5.5 The Recipient shall provide Highways England with a copy of its annual accounts within six months (or such lesser period as Highways England may reasonably require) of the end of the relevant financial year in respect of each year in which the Funding is paid.
- 5.6 The Recipient shall comply and facilitate Highways England's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and Highways England.

6. MONITORING AND REPORTING

- 6.1 The Recipient shall closely monitor the delivery and success of the Project throughout the Funding Period to ensure that the aims and objectives of the Project are being met and that this Funding Agreement is being adhered to.
- 6.2 If the Recipient has any grounds for suspecting financial irregularity in the use of the Funding it must notify Highways England immediately, explain what steps are being taken to investigate the suspicion and keep Highways England informed about the progress of the investigation. For these purposes “financial irregularity” includes fraud or mismanagement and the use of the Funding for purposes other than the Project.
- 6.3 The Recipient shall provide Highways England with a financial report and an operational report on its use of the Funding and delivery of the Project every month and in such formats as Highways England may reasonably require. The Recipient shall provide Highways England with each report within three working days of the start of the next month to which it relates.
- 6.4 Where the Recipient has obtained funding from a third party for its delivery of part of the Project, the Recipient shall include the amount of such funding in its financial reports together with details of what that funding has been used for.
- 6.5 If required to do so by Highways England in writing, along with its first quarterly financial report, the Recipient shall provide Highways England with a risk register and insurance review in the format provided by Highways England. The Recipient shall address the health and safety of its staff in the risk register.
- 6.6 The Recipient shall on request provide Highways England with such further information, explanations and documents as Highways England may reasonably require in order for it to establish that the Funding has been used properly in accordance with this Funding Agreement.
- 6.7 The Recipient shall permit any person authorised by Highways England (including the representative of the Comptroller and Auditor General) such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this Funding Agreement and shall, if so required, provide appropriate oral or written explanations from them.
- 6.8 The Recipient shall permit any person authorised by Highways England for the purpose to visit the Recipient once every quarter to monitor the delivery of the Project. Where, in its reasonable opinion, Highways England considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person to make such visits on its behalf.

6.9 Within three (3) months after the end of the Funding Period, the Recipient shall provide Highways England with a final report which shall confirm whether the Project has been successfully and properly completed.

7. ACKNOWLEDGMENT AND PUBLICITY

7.1 The Recipient shall acknowledge the Funding in its annual report and accounts, including an acknowledgement of Highways England as the source of the Funding.

7.2 Subject to Highways England's prior written approval of any content (not to be unreasonably withheld or delayed) the Recipient shall acknowledge the support of Highways England in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by Highways England) shall include Highways England's name and logo (or any future name or logo adopted by Highways England) using the templates provided by Highways England from time to time.

7.3 In using Highways England's name and logo, the Recipient shall comply with all reasonable visual identity guidelines issued by Highways England from time to time.

7.4 The Recipient agrees to participate in and co-operate with reasonable promotional activities relating to the Project that may be instigated and/or organised by Highways England.

7.5 Highways England may acknowledge the Recipient's involvement in the Project as appropriate without prior notice.

7.6 Highways England may disclose the information related to this Funding Agreement to the extent that Highways England (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out Highways England's public functions and obligations, including those set in Crown Commercial Services' guidance and Procurement Policy Notes¹.

7.7 The Recipient shall comply with all reasonable requests from Highways England to facilitate visits, provide reports, statistics, photographs and case studies that will assist Highways England in its promotional and fundraising activities relating to the Project.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 Highways England and the Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either Highways

¹ Available at <https://www.gov.uk/government/collections/procurement-policy-notes>

England or the Recipient before the Commencement Date or developed by either party during the Funding Period, shall remain the property of that party.

- 8.2 Where Highways England has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Recipient shall, on termination or expiry of this Funding Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by Highways England.

9. CONFIDENTIALITY

- 9.1 Subject to clauses 7 (Acknowledgement and Publicity) and clause 10 (Freedom of Information) each party shall during the term of this Funding Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Funding Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Funding Agreement or save as expressly authorised in writing by the other party.

- 9.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:

- (a) at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Funding Agreement by the receiving party;
- (b) is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or
- (c) is at any time after the date of this Funding Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

- 9.3 Subject to the provisions of Clause 9.4 the Recipient may disclose Confidential Information to the minimum extent required by:

- (a) an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction;
- (b) the rules of any listing authority or stock exchange on which its shares are listed or traded; or
- (c) the laws or regulations of any country to which its affairs are subject.

9.4 Before the Recipient discloses any Confidential Information pursuant to Clause 9.3 it shall, to the extent permitted by law, give Highways England as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with this Clause 9.2, the Recipient shall take into account Highways England's requests in relation to the content of this disclosure.

9.5 If the Recipient is unable to inform Highways England before Confidential Information is disclosed pursuant to Clause 9.3 it shall, to the extent permitted by law, inform Highways England of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

10. FREEDOM OF INFORMATION

10.1 Highways England and the Recipient acknowledge that each of them is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs).

10.2 Highways England or the Recipient (as the case may be) shall:

(a) provide all necessary assistance and cooperation as reasonably requested to enable one another to comply with their obligations under the FOIA and EIRs;

(b) transfer to each other any request for information relating to this agreement that either of them receives and considers the other is better placed to respond to as soon as practicable and in any event within 2 working days of receipt;

(c) provide one another with a copy of all information belonging to them requested in the request for information which is in their possession or control in the form that the other reasonably requires within 5 working days (or such other period as they may reasonably specify) of either of them requesting for such information.

10.3 Both parties acknowledge that either of them may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the other. Either party shall take reasonable steps to notify the other of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the party responding to the request shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

11. DATA PROTECTION

11.1 Both Parties will comply with all applicable requirements of and all their obligations under the Data Protection Legislation which arise in connection with this Funding Agreement.

11.2 At the date of this Funding Agreement, the Parties do not anticipate that any Personal Data will be shared between the Parties for the purposes of this Funding Agreement. If, after entering in to this Funding Agreement, it becomes necessary for the Recipient to be a Processor of Personal Data for Highways England it shall not commence that activity until it has entered into a separate written agreement with Highways England.

12. WITHHOLDING, SUSPENDING AND REPAYMENT OF FUNDING

12.1 Highways England's intention is that the Funding will be paid to the Recipient in full. However, without prejudice to Highways England's other rights and remedies, Highways England may at its discretion withhold or suspend payment of the Funding and/or require repayment of all or part of the Funding if:

- (a) the Recipient uses the Funding for purposes other than the Purpose for which it has been awarded;
- (b) the Recipient uses the MRP Funding for purposes other than the purpose for envisaged in this Funding Agreement;
- (c) the delivery of the Project does not start within 1 month of the Commencement Date and the Recipient has failed to provide Highways England with a reasonable explanation for the delay;
- (d) Highways England considers that the Recipient has not made satisfactory progress with the delivery of the Project;
- (e) the Recipient is in the reasonable opinion of Highways England, delivering the Project in a negligent manner;
- (f) the Recipient obtains duplicate funding from a third party for the Project;
- (g) the Recipient obtains funding from a third party which, in the reasonable opinion of Highways England, undertakes activities that are likely to bring the reputation of the Project or Highways England into disrepute;
- (h) the Recipient provides Highways England with any materially misleading or inaccurate information;
- (i) The Recipient takes inadequate measures to investigate suspected financial irregularity as required by clause 6.2;
- (j) the Recipient commits or has committed a Prohibited Act;
- (k) any employee or volunteer of the Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment

of the Project or (b) taken any actions which, in the reasonable opinion of Highways England, bring or are likely to bring Highways England's name or reputation into disrepute; or

- (l) the Recipient fails to comply with any of the terms and conditions set out in this Funding Agreement and fails to rectify any such failure within thirty (30) days of receiving written notice detailing the failure.

12.2 Highways England may retain or set off any sums owed to it by the Recipient which have fallen due and payable against any sums due to the Recipient under this Funding Agreement or any other agreement pursuant to which the Recipient provides goods or services to Highways England.

12.3 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with this Funding Agreement it will notify Highways England as soon as possible so that, if possible, and without creating any legal obligation, Highways England will have an opportunity to provide assistance in resolving the problem or to take action to protect Highways England and the Funding monies.

13. ANTI-DISCRIMINATION

13.1 The Recipient shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.

13.2 The Recipient shall take all reasonable steps to secure the observance of clause 13.1 by all servants, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Project.

14. HUMAN RIGHTS

14.1 The Recipient shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Funding Agreement as if the Recipient were a public body (as defined in the Human Rights Act 1998).

14.2 The Recipient shall undertake, or refrain from undertaking, such acts as Highways England requests so as to enable Highways England to comply with its obligations under the Human Rights Act 1998.

15. LIMITATION OF LIABILITY

15.1 Highways England accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the Funding or from withdrawal of the Funding. The Recipient shall indemnify and hold

harmless Highways England, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Project, the non-fulfilment of obligations of the Recipient under this Funding Agreement or its obligations to third parties.

- 15.2 Subject to clause 15.1, Highways England's liability under this Funding Agreement is limited to the payment of the Funding.

16. WARRANTIES

The Recipient warrants, undertakes and agrees that:

- (a) it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Funding);
- (b) it has not committed, nor shall it commit, any Prohibited Act;
- (c) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify Highways England immediately of any significant departure from such legislation, codes or recommendations;
- (d) it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;
- (e) it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (f) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (g) all financial and other information concerning the Recipient which has been disclosed to Highways England is to the best of its knowledge and belief, true and accurate;
- (h) it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Funding;
- (i) it is not aware of anything in its own affairs, which it has not disclosed to Highways England or any of Highways England's advisers, which might reasonably have influenced the decision of Highways England to make the Funding on the terms contained in this Funding Agreement; and
- (j) since the date of its last accounts there has been no material change in its financial position or prospects.

17. INSURANCE

17.1 The Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Recipient, arising out of the Recipient's performance of the Funding Agreement, including death or personal injury, loss of or damage to property or any other loss (the **Required Insurances**).

17.2 The Required Insurances referred to above include (but are not limited to):

- (a) public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Project; and
- (b) employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Project.

The Recipient shall (on request) supply to Highways England a copy of such insurance policies and evidence that the relevant premiums have been paid.

17.3 As an alternative to the arrangements contemplated in clauses 17.1 and 17.2 the Recipient may provide evidence which demonstrates to Highways England that it has sufficient resources to meet in full any claim which would otherwise have been the subject of a claim against the Required Insurances.

18. DURATION

18.1 Except where otherwise specified, the terms of this Funding Agreement shall apply from the date of this Funding Agreement until the anniversary of expiry of the Funding Period or for so long as any Funding monies remain unspent by the Recipient, whichever is longer.

18.2 Any obligations under this Funding Agreement that remain unfulfilled following the expiry or termination of the Funding Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

19. TERMINATION

Highways England may terminate this Funding Agreement and any Funding payments on giving the Recipient one months' written notice for any reason.

20. ASSIGNMENT

The Recipient may not, without the prior written consent of Highways England, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Funding Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Funding.

21. WAIVER

No failure or delay by either party to exercise any right or remedy under this Funding Agreement shall be construed as a waiver of any other right or remedy.

22. NOTICES

All notices and other communications in relation to this Funding Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

23. DISPUTE RESOLUTION

23.1 In the event of any dispute arising between the parties to this Funding Agreement in relation to this Funding Agreement the matter is referred to the Senior Representatives. A party shall not refer a dispute to the Senior Representatives that is the same or substantially the same as one that has already been referred to the Senior Representatives. If the dispute, or elements of the dispute, is not resolved by the Senior Representatives in accordance with clauses 23.2 and 23.3 it shall be referred to mediation in accordance with clause 23.5.

23.2 The party referring a dispute shall notify the Senior Representatives of the nature of the dispute it wishes to resolve in its statement of case. Each party submits to the other its statement of case within one (1) week of the notification. Each statement of case shall be limited to no more than ten (10) sides of A4 paper using Arial font no less than 11 point together with supporting evidence, unless otherwise agreed by the parties.

23.3 The Senior Representatives shall attend as many meetings, and may use any procedure, they consider necessary to try to resolve the dispute over a period of up to twenty -eight (28) days (or any other longer period agreed by the parties). At the end of this period, the Senior Representatives shall produce a list of the issues agreed and issues not agreed. The parties shall put into effect any issues agreed. Unless and until the Senior Representatives have informed the parties of the decision, the parties shall proceed as if the matter disputed was not disputed. No evidence of the statement of case or discussions shall be disclosed, used or referred to in any subsequent proceedings before any mediator or any arbitrator.

23.4 In the absence of agreement after the twenty -eight (28) days period referred to in clause 23.3 the parties will seek to resolve the matter through mediation under the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at

the time of referral to mediation (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear their own costs of the mediation with the costs and expenses of CEDR shared between them equally. Unless and until ending of the mediation, the parties shall proceed as if the matter disputed was not disputed.

23.5 If the dispute is not resolved within forty two (42) days after written referral for mediation (or other longer period agreed by the parties) or either party fails to participate or ceases to participate in the mediation before the expiry of that forty-two day period, or the mediation terminates before the expiry of that forty-two day period, the dispute shall be finally resolved by arbitration proceedings in accordance with clause 23.6 of this Funding Agreement. The parties shall put into effect any terms of settlement agreed in the mediation and shall not refer any element of the terms of settlement to arbitration.

23.6 Where clause 23.5 applies either party may notify the other party of the matter which remains disputed and state that it intends to refer the disputed matter for final resolution by arbitration under the London Court of International Arbitration Rules current at the date of the notification. The dispute shall not be referred to arbitration unless this notification is given within twenty -eight (28) days of the ending (by any means) of the mediation procedure in clause 23.4. No evidence, statement or discussions shall be disclosed, used or referred to in any subsequent proceedings before any arbitrator. Unless and until ending of the arbitration, the parties shall proceed as if the matter disputed was not disputed.

23.7 The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, United Kingdom. The language to be used in the arbitral proceedings shall be English.

24. NO PARTNERSHIP OR AGENCY

This Funding Agreement shall not create any partnership or joint venture between Highways England and the Recipient, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

25. JOINT AND SEVERAL LIABILITY

Where the Recipient is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Funding Agreement on behalf of the Recipient shall be jointly and severally liable for the Recipient's obligations and liabilities arising under this Funding Agreement.

26. VARIATION

Highways England may at any time with the written agreement of the Recipient revise, revoke or add to the terms of this Funding Agreement.

27. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Funding Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

28. GOVERNING LAW

This Funding Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

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

.....
Authorised Signatory

.....
Authorised Signatory

Executed as a deed by **NOTTINGHAM CITY COUNCIL** by affixing its common seal in the presence of

.....
Authorised Signatory

.....
Authorised Signatory

Schedule 1 The Project

D2N2 Ultra Low Emission Vehicle (ULEV) Experience Project

Project Aims

The Project aims to accelerate the uptake of fully electric vans and electric cars by businesses in and around the D2N2 Local Enterprise Partnership area, covering Derby / Derbyshire (D2) and Nottingham / Nottinghamshire (N2), to contribute to cleaner air to support of achieving compliance with the legal limit value for nitrogen dioxide (NO₂) in the shortest timescale possible. It will build on the success of the Participant's Go Ultra Low programme of activity.

Strategic Drivers

The Department for Environment Food and Rural Affairs (Defra) has identified over 100 sections of the Strategic Road Network (SRN) where there are exceedances of the legally binding EU limit values for nitrogen dioxide (NO₂). Parts of the A52 in Nottingham and the A38 in Derby are examples of such links and there are others in D2N2 area. Highways England has therefore been asked to identify what mitigation measures could be secured to ensure compliance with the air quality directive in the shortest time possible. Persuading local fleet managers to switch from diesel vans (diesel cars and diesel taxis) to electric vans and thereby reduce emissions at source is considered a mitigation measure that will be supported by the public in this location and which will complement the Recipient's clean plans and assist in achieving Defra's clean air order requirements.

This measure will help the Recipient increase the likelihood of achieving compliance with the limit value for NO₂ for their EU reporting zone than with their local clean air plans alone.

This grant support by Highways England will enable the Recipient to design and implement an Ultra Low Emission Vehicle (ULEV) Experience Project to complement their own clean air plans. This will help fleets make a much bigger step in emissions improvements than simply moving to vehicles compliant with the latest Euro 6 emission standard. Every additional electric vehicle on the joint networks, i.e. the SRN operated by Highways England and the local road network operated by the Recipient, will contribute to cleaner air at the roadside and reduced carbon emission from the transport sector, supporting the Road to Zero strategy published by Office for Low Emission Vehicles (OLEV). This allows the Recipient and Highways England to lead the way in terms of electric vehicle uptake, which is a key ambition of Highways England's published Air Quality Strategy.

Background

An electric van pilot study, has established that fleet operators choose to switch from diesel to electric when given the opportunity to trial the use of electric vehicles (for free) over extended periods. This experience allows drivers to discover the benefits of driving electric vans and gives fleet managers the opportunity to find out whether electric vans can operate successfully within the daily operational schedule undertaken by the organisation. The same is expected to be true for electric cars (that are part of business fleets), which the Recipient is convinced there is local opportunity to encourage businesses to switch to these vehicles as well as electric vans as a result knowledge gained from their Go Ultra Low City activity.

Project Approach

The Recipient will purchase a fleet of fully electric vehicles, initially estimated to total 50 such vehicles comprising 19 electric light sized (less than 3.5tns) vans, 25 electric medium sized (between 3.5tns and 5tns) vans and 6 small electric cars. All will be made available for loan to businesses (participants) on a 'try before you buy' basis for loan periods of approximately two months at a time. The scheme is expected to launch in September 2020 and run for the earlier of 2 years of operation or the Funding Period.

Whenever possible, the vehicles will be purchased by the Recipient through existing public framework contract. The majority of vans to be purchased will be smaller van models as these presently offer the greatest value for money and market appeal although a smaller number of medium and / or larger van models may also be purchased for use on the scheme as new models come to the market should there be an appetite from participants to try them.

Vehicles will be stored at sites owned by the Recipient, one of which is expected to be at Eastcroft depot, when not actively out on loan and will be maintained and valeted by the Recipient's own in-house Nottingham Electric Vehicle Service (NEVS) fleet team.

The loan of a vehicle by any participant in the scheme will be subject to a legally enforceable written loan agreement setting out acceptable use of the vehicle and the rights and obligations of the Recipient and the participant for the duration of the loan period.

The Recipient will implement two electric vehicle charge point hubs at depots to facilitate charging of vehicles when they are returned to base. Such hubs will each comprise two rapid chargers (50kWh) and up to four fast chargers (7kWh).

Participants in the early stage of the scheme will be able to access grant funding provided by the Recipient (using Funding from the Project) to assist with the supply and installation of charge points (7kWh – 22kWh) for fleets. These could be provided at participants' workplaces or possibly at the homes of their employees (subject to employer taxation rules, verification and approval) for fleet vehicles taken home overnight. The Recipient will make grants available to be allocated to participants on a transparent and non-discriminatory first come, first served basis. These grants are additional to funding for workplace vehicle charging that may be available from the government or any other external sources.

The Recipient will arrange for all vehicles to be fitted with telematics devices which will be purchased, where possible, using a public framework. Information gathered from these devices will be used to provide participants with insights around their use of the vehicle to help draw comparisons with their existing fleet and inform their business' future vehicle purchasing decisions.

In order to generate interest and customer leads, the Recipient will undertake promotional and marketing activity as part of the Project. This will include a programme of events, a website and campaigns conducted through appropriate marketing channels that may include

social media, print, email, broadcast media and any other channels deemed appropriate. The Recipient will draw on existing resource, especially the Workplace Travel Advisors who have been instrumental in seeking sustainable travel behaviour change since the introduction of the Workplace Parking Levy in 2012 and the NEVS Centre staff, to maximise reach of this opportunity.

It is expected that the Recipient will incorporate all electric vehicles purchased as part of this project into their fleet once their use for operational demonstration has ended. This will ensure that the clean air benefits of the vehicles will be locked into the area.

It is anticipated that fifty percent (50%) of participant who make use of an electric vehicle loan will then go on to purchase an average of three electric vehicles for their fleets. With 50 electric vehicles available for a loan of approximately two (2) months each for this Project operating for a period of two years, could deliver up to three hundred (300) electric vehicles (small and medium sized vans and cars) on the roads within the D2N2 area (including the M1, A38, A453 and A52). The Recipient will develop a benefit realisation plan detailing how benefits of the Project will be assessed and measured. Such benefits are expected to be quantitative, in terms of both oxides of nitrogen (NOx) damage savings and carbon dioxide (CO₂) savings associated with the purchased fleet and vehicles that participants go onto purchase as a result of this Project, as well as qualitative benefits, say positive press and reputational benefits.

Schedule 2 Payment Schedule

Milestone	Milestone Date	Amount of Funding Payable	Test Success Criteria	Evidence	Planned Date of Payment
Project Commencement		Total Funding sum	Funding Agreement signed by Highways England and Recipient	Funding Claim referencing Highways England Purchase Order	By 31 March 2020
2 electric vehicle charge point hubs (comprising 2 rapid 50kWh and up to 4 fast 7kWh chargers) installed at depots available for Recipient use		£0.00	2 electric vehicle charge point hubs (comprising 2 rapid 50kWh and up to 4 fast 7kWh chargers) available on a transparent and non-discriminatory basis		
With 19 electric light vans (less than 3.5tns) available for a loan of approximately two (2) months each for this Project operating for a period of two years.		£0.00	19 electric light vans (less than 3.5tns) available on a transparent and non-discriminatory basis		

Milestone	Milestone Date	Amount of Funding Payable	Test Success Criteria	Evidence	Planned Date of Payment
With 25 electric medium vans (between 3.5tns and 5tns) available for a loan of approximately two (2) months each for this Project operating for a period of two years.		£0.00	25 electric medium vans (between 3.5tns and less than 5tns) available on a transparent and non-discriminatory basis		
With 6 small electric cars available for a loan of approximately two (2) months each for this Project operating for a period of two years.		£0.00	6 small electric cars available on a transparent and non-discriminatory basis		
Deliver up to three hundred (300) electric vehicles on the roads within the D2N2 area (including the M1, A38, A453 and A52).		£0.00	Three hundred (300) electric vehicles (comprising electric small vans, electric medium vans and electric cars on the roads within D2N2 area.		

Schedule 3 Breakdown of Funding

Funding from Highways England

Item of Capital Expenditure	Budget (in UK Sterling)	Tolerance
Electric vehicles	£2,170,000	1%
Vehicle telematics	£20,000	5%
Electric vehicle charging hubs	£200,000	2%
Charge point infrastructure grants	£300,000	2%
Total (Capital funding)	£2,690,000	0%

Recipient Funding provided by the Recipient

Item of Resource Expenditure	Budget (in UK Sterling)
ULEV procurement staffing incl. legal, procurement, strategy and technical resources	£60,000
Programme Management staffing comprising an allocation of ULEV fleet and Transport Strategy staffing	£130,000
Project Management staffing comprising the existing WS officers	£250,000
Support to provide promotional activities and monitoring and evaluation activities	£40,000
NEVS aftercare and technical support	£350,000
Insurance policy cover for the trial vehicles to be provided by Plan Insurance Brokers	£170,000
Total (Resource funding)	£1,000,000