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Sample only - will be issued if applicable

**HIGHWAYS ENGLAND COMPANY LIMITED**
as Old Client

**[●]**
as New Client

**[●]**
as Contractor

Sample only - will be issued if applicable

# DEED OF NOVATION

relating to a term service short contract for the provision of Technical Surveys and Testing – Pavement (non-intrusive) in Highways England Region [●]

**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:<br>"**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.<br>"**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. |

Sample only - Not to be used if not applicable

| | |
|---|---|
| **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. |
| **5. Notices** | |
| 5.1 | Any notice or other communication required under this deed shall be given in writing and shall be deemed to have been properly given if compliance is |

Sample only - Withheld if applicable

| | |
|---|---|
| | made with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962 and the Postal Services Act 2000). |
| **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. |

Sample only - will be issued if applicable

| **Execution Page** |
| --- |
| **This deed has been executed as a deed and delivered on the date stated at the beginning of this deed.** |

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

Sample only - will be issued if applicable

**Highways England Company Limited**

Sample only - will be issued if applicable

# Scope

# Form of Novation

# Annex 14
## (Old Contractor to New Contractor)

## CONTENTS AMENDMENT SHEET

| Issue No. | Revision No. | Amendments | Initials | Date |
|---|---|---|---|---|
| 0 | 0 | Tender issue | ET | Nov 2020 |
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Sample only - will be issued if applicable

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Sample only - will be issued if applicable

**HIGHWAYS ENGLAND COMPANY LIMITED**
as Client

**[●]**
as New Contractor

**[●]**
as Old Contractor

# DEED OF NOVATION

relating to a term service short contract for the provision of Technical Surveys and Testing – Pavement (non-intrusive) in Highways England Region [●]

Sample only - Will be issued if applicable

**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:<br>"**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.<br>"**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. |

Sample only - Not to be used if not applicable

| | |
|---|---|
| **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 shall be deemed to have been properly given if compliance is made with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962 and the Postal Services Act 2000). |

Sample only - will be issued if applicable

| 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. |

Sample only - will be issued if applicable

| **Execution Page** |
| --- |
| **This deed has been executed as a deed and delivered on the date stated at the beginning of this deed.** |

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

Sample only - will be issued if applicable

**Highways England Company Limited**

# Scope

# Health and Safety

# Annex 15

## CONTENTS AMENDMENT SHEET

| Amend. No. | Revision No. | Amendments | Initials | Date |
|---|---|---|---|---|
| 0 | 0 | Tender issue | ET | Nov 2020 |
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# 1 HEALTH AND SAFETY

## 1.1 General Requirements

1.1.1 The *Contractor* complies with the *Client*'s health and safety requirements as detailed in Annex 02 (reference documents) to the Scope.

1.1.2 The *Contractor* complies with and operates according to all relevant and prevailing health and safety legislation, considerations, guidance and industry best practice. The *Contractor* Provides the Service in a way that aligns to the ***Client's*** health and safety policies and initiatives.

## 1.2 Management of Health and Safety

1.2.1 The *Contractor*

- operates a formal health and safety management system which complies with ISO45001:2018, or another relevant, equivalent standard accepted by the *Client* and
- documents the systems and fully and effectively implements the health and safety management system prior to the *access date*.

1.2.2 The *Contractor*

- obtains certification from a body accredited by UKAS (or another body accepted by the *Client*) of its health and safety management system within 6 months of the Contract Date and
- submits to the *Client* a copy of all certificates within one week after it is obtained.

If the *Contractor* already holds such certification at the Contract Date, the *Contractor* submits to the *Client* a copy of all certificates within one week of the Contract Date.

1.2.3 The *Contractor* operates and develops its health and safety management system to meet the ***Client's*** requirements. The *Contractor* provides consistency of approach and interoperability with other stakeholders where appropriate, ensuring activities are consistent between all stakeholders allowing seamless provision of *service* between different sites within the Affected Property.

1.2.4 The ***Contractor's*** health and safety management system forms part of the ***Contractor's*** Quality Plan.

## 1.3 ***Contractor's*** occupational health management system

1.3.1 The *Contractor*

- operates an occupational health management system in line with

requirements of the Health and Safety Executive's prevailing construction occupational health management model, "Essentials of Managing Construction Health Risks" and

- participates in *Client* working groups to improve health and safety management performance in relation to the following topics
    - designing for health and safety in buildability and operability and maintenance,
    - construction health and safety improvement and
    - sustainable design and sustainable construction.

1.3.2 If, in the opinion of the *Client*, the *Contractor* is Providing the Service in an unsatisfactory manner or commits a breach in

- any prevailing legislation or
- the *Contractor's* health and safety management system or
- a subcontractor's health and safety management system or
- the *Client's* health and safety management system,

the *Client* notifies the *Contractor* following the process set out in GG128 ("Requirements for reporting incidents, events and undesirable circumstances: health, safety, wellbeing, structural and environmental") (**see link in Annex 2**) and raises formally via the *Client's* H&S management system assurance process.

1.3.3 The notification provided by the *Client* to the *Contractor* sets out the breach or breaches identified with reasons and outlines the minimum steps required of the *Contractor* to rectify the breach and a date for rectifying.

1.3.4 Where the *Contractor* has been given notification of a breach, the *Contractor* rectifies the breach or failure to Provide the Service in a satisfactory manner, by the date specified by the *Client*. The *Contractor* corrects other breaches that are not notified by the *Client*.

## 1.4 Subcontractors' health and safety management systems

1.4.1 The *Contractor* ensures that any of its subcontractors (at any stage of remoteness from the *Client)* working on sites where the *Contractor* is the principal contractor operate a formal health and safety management system which fulfils the requirements set out above.

## 1.5 Health and safety culture and communication

1.5.1 The *Contractor* ensures that it creates a culture and communications that align to the *Client's* "Home Safe and Well" message. The *Contractor*

- operates a behavioural safety programme,

- establishes, operates and delivers health and safety employee consultation arrangements to its employees in accordance with applicable prevailing health and safety legislation,
- provides relevant health and safety training, including induction, to staff and visitors to ensure compliance with prevailing health and safety legislation and approved codes of practice and
- participates in *Client* events, programmes and initiatives as appropriate and if requested.

## 1.6 Health and safety exchange of information

1.6.1 The *Client* provides information requested by the *Contractor* to enable the *service* to be performed in a safe and legally compliant manner.

1.6.2 The *Contractor* provides information in the frequency and format specified in the contract, or if a different frequency and format is required, as specified by the *Client*.

1.6.3 The *Contractor* immediately brings to the attention of the *Client* any issue or potential issue that may have a detrimental impact on the health and safety and wellbeing of any stakeholders.

## 1.7 Health and safety resources

1.7.1 The *Contractor* retains sufficient competent health and safety resource as part of its management structure.

1.7.2 The minimum requirements for the *Contractor's* health and safety resources are that their leads

- have membership of The Institution of Occupational Safety and Health (IOSH),
- are qualified to National Examination Board in Occupational Safety and Health (NEBOSH) standard (or higher),
- have a demonstrable working knowledge of prevailing health and safety legislation, guidance and approved codes of practice relevant to the *service,* and
- have the appropriate level of competence, training and demonstrable experience in the field for which they are Providing the Service.

## 1.8 Health & safety competence of *Contractor*'s employees

1.8.1 The *Contractor* ensures that its employees are competent to Provide the Service and upon request provides the *Client* with information about the *Contractor's* arrangements for assuring employee competence and with employee training records.

1.8.2 Before commencement of the *service,* the *Contractor* provides the *Client* with a statement (signed by a person authorised to sign tenders on behalf of the company) to confirm that all the *Contractor's* employees and subcontractors (at any stage of remoteness from the *Client*) are competent to undertake the roles that they are assigned to deliver the *service*. The *Contractor* provides further signed statements to the *Client* when any new *Contractor* employees are appointed or assigned to deliver the *service*.

1.8.3 For roles where no suitable recognised competence standards exist, the *Contractor* provides information against the selection criteria and method used to provide assurance of competence.

## 1.9 Health and Safety in Construction

1.9.1 The *Contractor* ensures that assets, including materials and equipment, are used, installed, constructed and maintained in accordance with prevailing legal requirements, standards and specifications instructed by the *Client*.

## 1.10 Incident Reporting and Investigation

1.10.1 The *Contractor* complies with the *Client*'s Guidance GG128 "Requirements for reporting incidents, events and undesirable circumstances: health, safety, wellbeing, structural and environmental" or its later update or replacement, including any time periods required by GG128 (see link in **Annex 02)**. If a time period is not specified in GG128, then *period of reply* applies, unless agreed otherwise by the *Client.*

1.10.2 Following the notification of an incident, the *Contractor*, in line with the *Client*'s standards, determines if a formal investigation is required, and if necessary follows the notification, investigation and reporting procedures as set out therein.

1.10.3 The *Contractor* undertakes investigations with an independent competent person who has relevant training, knowledge and experience in effective accident/incident investigation.

1.10.4 Nothing prevents the *Contractor* from carrying out its own (additional) investigation of an incident, and in such case, the *Contractor* provides a copy of its completed incident report to the *Client*.

1.10.5 The incident report provides

- information on the circumstances surrounding the accident/ incident and any remedial measures to be taken in order to prevent a recurrence, and
- relevant photographs and statements as an integral part of the report.

1.10.6 Where the *Contractor* is compiling a draft investigation report, the *Contractor* discusses the findings of the draft report with the *Client* prior to the production of the final draft of such a report.

1.10.7 The *Contractor* implements applicable recommendations arising from incident investigations within the timescales agreed with the *Client*.

1.10.8 The *Client* has the right to investigate any incidents wherever they may occur.

1.10.9 The *Contractor* provides the *Client* unrestricted access at all reasonable times to the facilities, equipment, materials, employees and records of the *Contractor* or the subcontractor (at any stage of remoteness from the *Client)* for this purpose (subject to any statutory or contractual obligation prohibiting this access).

1.10.10 The *Contractor* provides a copy all materials related to an incident to the *Client* within the timescales agreed. Any material that would otherwise fall to be disclosed by the *Contractor* to the *Client* may be withheld by the *Contractor* provided that the *Contractor*'s legal adviser confirms to the *Client* that the material is:

- a confidential communication between the *Contractor* and its legal advisor for the purposes of seeking or giving legal advice that the legal advisers would normally expect to be given legal privilege in the normal course of its business with the *Contractor*, or
- a confidential communication between the *Contractor* or its legal advisers and a third party where the communication came into existence with the dominant purpose of being used in connection with contemplated, pending or actual litigation in adversarial proceedings (as opposed to investigations or fact-finding inquiries).

1.10.11 The *Contractor* ensures that all subcontracts (at any stage of remoteness from the *Client*) contain requirements similar to subparagraphs 1 and 10 above.

## 1.11 Health and Safety Inspections

1.11.1 The *Contractor:*

- carries out formal site safety inspections as agreed with the *Client* and documents the findings of these inspections;
- ensures that only competent persons carry out inspections,
- notifies the *Client* in advance of the date of an inspection, and allows the *Client* to participate in inspections if the *Client* requests to do so, and

- takes effective actions to ensure that any issues identified during inspections are effectively addressed within the timescales agreed with the *Client*.

## 1.12 Health and Safety Management Audit

1.12.1 The *Contractor* allows the *Client* unrestricted access at all contracted hours to the premises, equipment, materials, employees and records of the *Contractor* and any subcontractors (at any stage of remoteness from the *Client*) (unless a statutory or contractual obligation prohibits the disclosure of any such records) to audit any or all of the ***Contractor's*** health and safety management systems. The *Contractor* includes, in all subcontracts, the rights of access for the *Client.*

1.12.2 The *Contractor* implements all recommendations from such audits agreed by the *Client* within a timescale mutually agreed between the *Client* and the *Contractor*.

## 1.13 Construction Design and Management (CDM) Regulations 2015 compliance

1.13.1 The *Client* appoints relevant CDM duty holders in writing, based upon a review of an organisation's ability and competence to perform the *service*.

1.13.2 CDM duty holders (principal contractor and principal designer) discharge their obligations under the CDM Regulations 2015 in compliance with any Approved Code of Practice or best practice guidance issued by the HSE, and provide the *Client* with evidence of such compliance, ensuring competent persons are maintained to continuously fulfil duty requirements throughout the *service*.

1.13.3 Principal contractor duties (as defined by CDM Regulations 2015) are to be undertaken by the *Contractor* when instructed by the *Client.* The *Contractor* refers to the Construction Industry Training Board (CITB) guidance when carrying out the principal contractor/ designer role. Where the *Contractor* is not required to undertake the principal contractor duties, the *Client* notifies the *Contractor* as to who will be undertaking this role.

1.13.4 During the pre-construction phase and before setting up a construction site in the Working Area, the *Contractor* creates a construction phase plan in respect of the relevant *service* in compliance with Regulation 12(2) of the CDM Regulations 2015 and provides a copy of the plan to the *Client.*

1.13.5 Where instructed by the *Client,* the *Contractor* undertakes the role of principal contractor and associated duties in respect of the *service* to which the CDM Regulations 2015 apply including:

- work carried out by the *Client* or
- work carried out by Others.

## 1.14 Medical Fitness

1.14.1 The *Contractor* advises the *Client* of any known medical disability or condition of any *Contractor* employees, or subcontractor's employees, or employees of any other related party, which is to be risk assessed and effective controls put in place to ensure their own health, safety and wellbeing and the health, safety and wellbeing of others.

1.14.2 When requested by the *Client*, the *Contractor* provides such information and other evidence (anonymised and with consideration given to the protection of personal data at any stage of remoteness from the *Client)* as may be reasonably required by the *Client* to demonstrate compliance with the above requirement.

## 1.15 Health Assessment and Control

1.15.1 The *Contractor* ensures that its direct employees are provided with such health surveillance as appropriate, having regard to the risks to their health and safety which are identified by a risk assessment and in accordance with prevailing health and safety and other relevant legislation.

1.15.2 The *Contractor* makes wellbeing services available to its employees and supply chain in line with, but not exhaustive of, the *Client's* instructions.

1.15.3 The *Contractor* monitors and records working days lost due to illness and stress-related conditions, and introduces management systems for minimising ill health. This data is supplied on request to the *Client*.

## 1.16 Alcohol and Substance Abuse

1.16.1 The *Contractor* ensures its employees, whilst engaged in Providing the Service, are not at any time in possession of, do not take, have not taken, and are not under the influence of any intoxicating substance ('Prohibited Substance'). This requirement does not apply where the *Contractor's* employees possess a Prohibited Substance for bona fide medical reasons, for which the *Client* has given acceptance for such *Contractor* employees to be engaged in Providing the Service.

1.16.2 The *Contractor* notifies the *Client* of any its employees who are undergoing a voluntary detoxification/rehabilitation programme whereupon the *Client* has the right to prevent such *Contractor's* employees from Providing the Service.

1.16.3 Where the *Client* is of the opinion that any of the *Contractor's* employees (or any subcontractors involved in Providing the Service) may be in possession of, have taken, or are under the influence of any Prohibited Substance while Providing the Service, the *Client* instructs the *Contractor* to perform the following as appropriate of such *Contractor* employees:

- breath testing by breathalyser
- urine testing by urinalysis
- both breath testing and urinalysis
- a search of personal possessions/ work area of such *Contractor* employees for evidence of a prohibited substance.

## 1.17 Health and Safety Charity-based Incentive Schemes

1.17.1 The *Contractor* adopts charity-based incentive schemes covering local and national charities if requested to do so by the *Client*.

## 1.18 Health and Safety Maturity Matrix Action Plan

1.18.1 If the *Contractor* (or where there is a joint venture, each Consortium Member) does not have an agreed Health and Safety Maturity Matrix Action Plan ('HSMM Action Plan') with the *Client,* the *Contractor* (or each Consortium Member) delivers a HSMM Action Plan and submits it to the *Client* not later than 6 weeks following the Contract Date.

1.18.2 The HSMM Action Plan is based on the Health and Safety Maturity Matrix ('HSMM') and the associated implementation plan produced by the *Contractor* (or each Consortium Member). It details specific actions to be taken under this contract by the *Contractor* (or each Consortium Member) and its subcontractors (at any stage of remoteness from the *Client*) in order to support delivery of the improvements identified in the implementation plans for the *Contractor* (or each Consortium Member).

1.18.3 The *Contractor* (or each Consortium Member) updates their HSMM Action Plan as needed to support delivery of the improvements identified in the implementation plans and on each anniversary of the Contract Date. The annual updates are based on the updated HSMM and implementation plans produced by the *Contractor* (or each Consortium Member).

1.18.4 The *Contractor* (or each Consortium Member) keeps a controlled copy of the HSMM Action Plan available for inspection by the *Client* at all times.

1.18.5 The *Client* notifies the *Contractor* (or a Consortium Member) if at any time the *Client* considers that the HSMM Action Plan

- does not comply with the requirements of this contract or;
- is not capable of delivering the improvements identified in the implementation plans.

1.18.6 Following such notification, the *Contractor* (or each Consortium Member) reviews the HSMM Action Plan and reports to the *Client* setting out proposed changes. If the *Client* accepts the proposals, the HSMM Action Plan is changed within agreed timescales.

1.18.7 If the *Contractor* (or where there is a joint venture, each Consortium Member) does not have an agreed Health and Safety Maturity Matrix Action Plan ('HSMM Action Plan') with the *Client,* the *Contractor* (or each Consortium Member) delivers a HSMM Action Plan and submits it to the *Client* within 6 weeks following the Contract Date.

## 1.19 Management of Road Risk

1.19.1 The *Contractor* ensures that it has systems in place for the effective management of occupational road safety in accordance with guidance provided by the HSE or other relevant industry guidance.

1.19.2 The *Contractor's* road safety management system has provision for assessing traffic management, driver competency and eligibility, driver safety training, vehicle maintenance and accident and incident investigation.

## 1.20 Driving for Better Business

1.20.1 The *Contractor*, as part of its organisation's health and safety at work programme

- Is a member of or complies with an accredited scheme for managing "Work-Related Road Risk" (WRRR),
- provides evidence of this to the *Client* and
- manages WRRR to an appropriate standard for the *service* that is being provided.

1.21.2 Within six months of the Contract Date the *Contractor*

- registers with the "Driving for Better Business" (DfBB) programme,
- undertakes the DfBB risk assessment and gap analysis of their 'driving at work' activities which covers all drivers and vehicles that may be used on business,
- implements a 'driving for work' policy that
    - complies with "Health and Safety Executive" (HSE) guidance,
    - applies to all areas of the business,
    - applies to all types of driving undertaken,
    - is communicated effectively to all employees who may drive for business purposes and
    - includes a statement from their chief executive officer (CEO) or board director responsible for WRRR that

outlines the importance attached to work-related road safety,

- implements an effective system for measuring and monitoring driver and vehicle compliance. This includes as a minimum
    - records of crashes and investigation results,
    - driver training or education supplied,
    - driver licence checking and relevant insurance checking,
    - employee policy acceptance and
    - where relevant vehicle checks and defect reporting,
- implements an effective system for promoting the same level of awareness regarding WRRS and compliance with HSE guidance through any subcontractors involved in Providing the Service. The *Contractor* completes (and ensures that all its subcontractors complete
    - the “Driving for Better Business (DfBB) Leadership Statement” (commitment) (see link in **Annex 02**) and
    - a self-declaration that they manage WRRS to the minimum acceptable level. The *Contractor* takes any required measures to ensure that declarations are correct,
- demonstrates to the *Client* the reduction of collisions, incidents or instances of non-compliance year on year, or provides a reasonable explanation if this is not the case.
- includes these requirements in all subcontracts (at any stage of remoteness from the *Client*.)

1.20.3 *The Contractor* shares knowledge and best practice with the DfBB community where appropriate or as advised by the *Client* and attends any related events/ initiatives as instructed by the *Client.*

## 1.21 Security

1.21.1 The *Contractor* obtains the consent of its employees to the searching at any time by an authorised representative of the *Client,* of their person or their property or of any article including, without limitation, any container, package, box, holdall, suitcase or vehicle which is in the possession or use of *Contractor*’s employees on the *Client*’s Affected Property, or being retained by the *Client* on behalf of the *Contractor* or *Contractor’s* employees.

1.21.2 Any person not complying or unwilling to comply with the requirements above, is removed from the *Client*'s Affected Property and not permitted access to the *Client*'s Affected Property.

## 1.22 Raising the Bar Initiative

1.22.1 The *Client's* Raising the Bar Initiative and subsequent guidance documents derive from a drive to raise health and safety standards across the industry through sharing best practice approaches. Details are found in **Annex 02**.

1.22.2 The *Contractor* compares the Raising the Bar Initiative guidance with their own health and safety practices and provides a report to the *Client* prior to the *access date* detailing

- where the Raising the Bar Initiative guidance is more comprehensive than the *Contractor's*, the *Contractor* produces a remedial plan for bringing their working practices up to this minimum standard and
- where the *Contractor's* working practices surpass those set out in the guidance, the *Contractor* provides details of these to allow the *Client* to update the guidance for the benefit of all road workers.

1.22.3 The *Client* undertakes an independent audit process established to assure the implementation of Raising the Bar Initiative activities. Assessment (and expectation) levels will increase over time as health and safety standards are raised and the bar is set incrementally higher.

1.22.4 The Raising the Bar Initiative and subsequent guidance documents derive from a drive to raise health and safety standards across the industry through sharing best practice approaches. Details are found in **Annex 02**.

## 1.23 Home Safe and Well Initiative

1.23.1 The *Contractor* submits to the *Client* for acceptance, a strategy of how it will operate around the *Client's* Home Safe and well initiative.

The *Contractor* commits and contributes to the *Client's* Home Safe and Well initiative by defining their own commitment to getting everyone Home Safe and Well, and considers where a positive difference can be added.

The *Contractor:*

- considers how its role in connecting the country can really make a difference and embed safety as the first imperative across all areas of responsibility,
- recognises the behaviours that enable the culture change required to achieve our vision and deliver the objectives of the organisation,
- engages and collaborates as appropriate with the wider business, supply chain and other stakeholders to promote health, safety and

wellbeing, recognising behaviours that bring “Home Safe and Well” to life,

- is responsible and accountable for the health, safety and wellbeing of those employed by the *Contractor* and those the *Contractor* works with and
- embeds the Home Safe and Well approach within the Health and Safety Maturity Matrix (HSMM) and associated implementation and action plans.

## 1.24 Deleterious and hazardous materials

1.24.1 Asbestos

The *Contractor* complies with the Control of Asbestos at Work Regulations 2012 and General Guidance 105 asbestos management (GG105) (see link in **Annex 02)**.

**Highways England Company Limited**

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# Scope

# Parent Company Guarantee

# Annex 16

# CONTENTS AMENDMENT SHEET

| Amend. No. | Revision No. | Amendments | Initials | Date |
|---|---|---|---|---|
| 0 | 0 | Tender issue | ET | Nov 2020 |
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**HIGHWAYS ENGLAND COMPANY LIMITED**
as *Client*

**[●]**
as Guarantor

# PARENT COMPANY GUARANTEE

relating to the Technical Surveys and Testing – Pavement (non-intrusive) Contract

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**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 "**Guarantor**") |
| **Background** | |
| A) | By the Contract, the *Client* has employed the *Contractor* to Provide the Service. |
| B) | The Guarantor is the [ultimate] parent company of the *Contractor*. |
| C) | The Guarantor has agreed to guarantee the due performance by the *Contractor* of his obligations under the Contract in the manner set out in this deed. |
| **Operative Provisions** | |
| **1. Definitions and Interpretation** | |
| 1.1 | Unless the contrary intention appears, the following definitions apply:<br>"**Contract**" means the contract dated [●] between the *Client* (1) and the *Contractor* (2) under which the *Contractor* has agreed to Provide the Service.<br>"***Contractor***" means [●] (company no [●]) whose registered office is at [●].<br>"**Insolvency Event**" means the *Contractor* being unable to pay its debts (as defined by Sections 123(1) and 268(1) of the Insolvency Act 1986) or any corporate action, legal proceedings or other procedure or step is taken in relation to:<br>• suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the *Contractor* other than a solvent liquidation or reorganisation of the *Contractor*;<br>• a composition, assignment or arrangement with any creditor of the *Contractor*,<br>• the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the *Contractor* or any of its assets; or |

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| | • enforcement of any security over any assets of the *Contractor*<br>• or any analogous procedure or step is taken in any jurisdiction.<br>"**Service**" means the services to be carried out by the *Contractor* under Task Orders issued by the *Client* pursuant to the Contract. |
| 1.2 | The clause headings in this deed are for the convenience of the parties only and do not affect its interpretation. |
| 1.3 | Words importing the singular meaning include the plural meaning and vice versa. |
| 1.4 | Words denoting the masculine gender include the feminine and neuter genders and words denoting natural persons include corporations and firms and all such words shall be construed interchangeably. |
| 1.5 | References in this deed to a clause are to a clause of this deed. |
| 1.6 | References in this deed to any statute or statutory instrument include and refer to any statutory amendment or re-enactment for the time being in force. |
| **2. Guarantee** | |
| 2.1 | In consideration of the *Client* agreeing to enter into the Contract with the *Contractor*, the Guarantor irrevocably and unconditionally guarantees and undertakes to the *Client* that:<br>• the *Contractor* will perform and observe all his obligations under the Contract at the times and in the manner provided in the Contract; and<br>• in the event of any breach of such obligations by the *Contractor*, the Guarantor shall procure that the *Contractor* makes good the breach or otherwise cause it to be made good and shall indemnify the *Client* against any loss, damage, demands, charges, payments, liability, proceedings, claims, costs and expenses suffered or incurred by the *Client* arising from or in connection with it. |
| 2.2 | The Guarantor shall also indemnify the *Client* against:<br>• any costs, losses and expenses (including legal expenses) which may be suffered or incurred by the *Client* in seeking to enforce and enforcing (i) this Guarantee and/or (ii) any judgment or order obtained in respect of this Guarantee; and<br>• any loss or liability suffered or incurred by the *Client* if any of the obligations of the *Contractor* under the Contract is or becomes illegal, invalid or unenforceable for whatsoever reason as if such obligations were not illegal, invalid or unenforceable. |
| 2.3 | Any limitation or defence which would have been available to the *Contractor* in an action under the Contract shall likewise be available to the Guarantor |

Will be issued as part of successful contract application

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| | in a corresponding action under this deed, provided that nothing in this clause shall:<br>• prejudice or affect any liability of the Guarantor under clause 2.2; nor<br>• allow the Guarantor to avoid liability if either of the events specified in clause 5 occurs. |
| **3. Guarantor's Liability** | |
| 3.1 | The obligations of the Guarantor under this deed are in addition to and independent of any other security which the *Client* may at any time hold in respect of the *Contractor's* obligations under the Contract and may be enforced against the Guarantor without first having recourse to any such security. |
| 3.2 | The obligations of the Guarantor under this deed are in addition to and not in substitution for any rights or remedies that the *Client* may have against the *Contractor* under the Contract or at law. |
| 3.3 | The liability of the Guarantor under this deed shall in no way be discharged, lessened or affected by:<br>• an Insolvency Event;<br>• any change in the constitution, status, function, control or ownership of the *Contractor* or any legal limitation, disability or incapacity relating to the *Contractor* or any other person;<br>• the Contract or any of the provisions of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;<br>• any time given, waiver, forbearance, compromise or other indulgence shown by the *Client* to the *Contractor*;<br>• the assertion or failure to assert or delay in asserting any rights or remedies of the *Client* or the pursuit of any right or remedy of the *Client*;<br>• the giving by the *Contractor* of any security or the release, modification or exchange of any such security or the liability of any person; or<br>• any other act, event, omission or circumstance which but for this provision might operate to discharge, lessen or otherwise affect the liability of the Guarantor<br>in each case with or without notice to, or the consent of, the Guarantor and the Guarantor unconditionally and irrevocably waives any requirement for notice of, or consent to, such matters. |

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| 3.5 | Any decision of an adjudicator, expert, arbitral tribunal or court in respect of or in connection with the Contract and any settlement or arrangement made between the *Client* and the *Contractor* shall be binding on the Guarantor. |
| **4. Variations to the Contract** | |
| 4.1 | The Guarantor authorises the *Contractor* and the *Client* to make any addition or variation to the Contract, the due and punctual performance of which shall likewise be guaranteed by the Guarantor in accordance with the terms of this deed. The liability of the Guarantor under this deed shall in no way be discharged or lessened by any such addition or variation. |
| **5. Liquidation/Determination** | |
| 5.1 | The Guarantor covenants with the *Client* that:<br>• if a liquidator is appointed in respect of the *Contractor* and the liquidator disclaims the Contract; or<br>• if the *Contractor's* employment under the Contract is determined for any reason<br>the liability of the Guarantor under this deed shall remain in full force and effect. |
| **6. Waiver** | |
| 6.1 | The Guarantor waives any right to require the *Client* to pursue any remedy (whether under the Contract or otherwise) which it may have against the *Contractor* before proceeding against the Guarantor under this deed. |
| **7. Rights of Guarantor against *Contractor*** | |
| 7.1 | The Guarantor shall not by any means or on any ground seek to recover from the *Contractor* (whether by instituting or threatening proceedings or by way of set-off or counterclaim or otherwise) or otherwise to prove in competition with the *Client* in respect of any payment made by the Guarantor under this deed nor be entitled in competition with the Client to claim or have the benefit of any security which the *Client* holds for any money or liability owed by the *Contractor* to the *Client*. If the Guarantor shall receive any monies from the *Contractor* in respect of any payment made by the Guarantor under this deed, the Guarantor shall hold such monies in trust for the *Client* for so long as the Guarantor remains liable or contingently liable under this deed. |
| **8. Continuing Guarantee** | |
| 8.1 | The terms of this deed are a continuing guarantee and shall remain in full force and effect until each part of every obligation of the *Contractor* under |

Will be issued to successful tenderer only after contract award

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| | the Contract has been performed and observed and until each and every liability of the *Contractor* under the Contract has been satisfied in full. |
| **9. Third Party Rights** | |
| 9.1 | Unless the right of enforcement is expressly granted, it is not intended that any third party should have the right to enforce any provision of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999. |
| **10. Notices** | |
| 10.1 | Any notice or other communication required under this deed shall be given in writing and shall be deemed to have been properly given if compliance is made with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962 and the Postal Services Act 2000). |
| **11. Governing Law** | |
| 11.1 | The application and interpretation of this deed shall in all respects be governed by English law and any dispute or difference arising under it shall be subject to the exclusive jurisdiction of the courts of England and Wales save that any decision, judgment or award of such courts may be enforced in the courts of any jurisdiction. |

will be issued to the successful contractor if applicable

| **Execution Page** |
|---|
| **This deed has been executed as a deed and delivered on the date stated at the beginning of this deed.** |

| | |
|---|---|
| Executed as a deed by **[GUARANTOR]** acting by [*name of director*] in the presence of: | Director: |
| Name of witness: | |
| Signature of witness: | |
| Address: | |
| Occupation: | |

| | |
|---|---|
| Executed as a deed by **[GUARANTOR]** acting by: | Director: |
| Director: | |
| Director/Secretary: | |

shall be issued to successful contractor if applicable