



National Highways Limited

Scheme Delivery Framework (SDF)

Framework Information

Appendix 7

Parent Company Guarantee

CONTENTS AMENDMENT SHEET

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NATIONAL HIGHWAYS LIMITED
as Client

[•]
as Guarantor

PARENT COMPANY GUARANTEE

relating to Scheme Delivery Framework for the provision of works and services.

DATED [●]

Parties

- 1) **NATIONAL HIGHWAYS 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 *Supplier* to provide the works or provide the service.
- B) The Guarantor is the [ultimate] parent company of the *Supplier*.
- C) The Guarantor has agreed to guarantee the due performance by the *Supplier* 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:

“**Contract**” means together

- the framework contract dated [●] between the *Client* (1) and the *Supplier* (2) (including any further agreement varying or supplementing the framework contract); and
- any Work Orders issued by the *Client* to the *Supplier* pursuant to the framework contract

under which the *Supplier* has agreed to provide the Service.

“**Supplier**” means [●] (company no [●]) whose registered office is at [●].

“**Insolvency Event**” means the *Supplier* 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:

- 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 *Supplier* other than a solvent liquidation or reorganisation of the *Supplier*;

- a composition, assignment or arrangement with any creditor of the *Supplier*,
- the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the *Supplier* or any of its assets; or
- enforcement of any security over any assets of the *Supplier*
- or any analogous procedure or step is taken in any jurisdiction.

“**Service**” means the services to be carried out by the *Supplier* under work orders issued by the *Client* pursuant to the Contract.

“**Work Order**” has the meaning in the framework contract dated [●] between the *Client* and the *Supplier* (including any further agreement varying or supplementing the framework 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 *Supplier*, the Guarantor irrevocably and unconditionally guarantees and undertakes to the *Client* that:
- the *Supplier* will perform and observe all his obligations under the Contract at the times and in the manner provided in the Contract; and
 - in the event of any breach of such obligations by the *Supplier*, the Guarantor shall procure that the *Supplier* 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:
- 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

- any loss or liability suffered or incurred by the *Client* if any of the obligations of the *Supplier* 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 *Supplier* in an action under the Contract shall likewise be available to the Guarantor in a corresponding action under this deed, provided that nothing in this clause shall:

- prejudice or affect any liability of the Guarantor under clause 2.2; nor
- 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 *Supplier'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 *Supplier* 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:

- an Insolvency Event;
- any change in the constitution, status, function, control or ownership of the *Supplier* or any legal limitation, disability or incapacity relating to the *Supplier* or any other person;
- the Contract or any of the provisions of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- any time given, waiver, forbearance, compromise or other indulgence shown by the *Client* to the *Supplier*;
- 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*;
- the giving by the *Supplier* of any security or the release, modification or exchange of any such security or the liability of any person; or

- 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

3.4 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.

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 *Supplier* shall be binding on the Guarantor.

4. Variations to the Contract

4.1 The Guarantor authorises the *Supplier* 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:

- if a liquidator is appointed in respect of the *Supplier* and the liquidator disclaims the Contract; or
- if the *Supplier's* employment under the Contract is determined for any reason

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 *Supplier* before proceeding against the Guarantor under this deed.

7. Rights of Guarantor against *Supplier*

7.1 The Guarantor shall not by any means or on any ground seek to recover from the *Supplier* (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 *Supplier* to the *Client*. If the Guarantor shall receive any monies from the *Supplier* 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 *Supplier* under the Contract has been performed and observed and until each and every liability of the *Supplier* 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.

Execution Page

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

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| Executed as a deed by [GUARANTOR] acting by [<i>name of director</i>] 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: | |