

- 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

Scope

Parent Company Guarantee

Annex 16

CONTENTS AMENDMENT SHEET

Amend. No.	Revision No.	Amendments	Initials	Date
0	0	Tender issue	ET	Feb 2021

HIGHWAYS ENGLAND COMPANY LIMITED
as Client

[•]
as Guarantor

PARENT COMPANY GUARANTEE

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

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 <i>Client</i> has employed the <i>Contractor</i> to Provide the Service.
B)	The Guarantor is the [ultimate] parent company of the <i>Contractor</i> .
C)	The Guarantor has agreed to guarantee the due performance by the <i>Contractor</i> of his obligations under the Contract in the manner set out in this deed.
Operative Provisions	
1. Definitions and Interpretation	
1.1	<p>Unless the contrary intention appears, the following definitions apply:</p> <p>“Contract” means the contract dated [●] between the <i>Client</i> (1) and the <i>Contractor</i> (2) under which the <i>Contractor</i> has agreed to Provide the Service.</p> <p>“Contractor” means [●] (company no [●]) whose registered office is at [●].</p> <p>“Insolvency Event” means the <i>Contractor</i> 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:</p> <ul style="list-style-type: none"> • 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 <i>Contractor</i> other than a solvent liquidation or reorganisation of the <i>Contractor</i>, • a composition, assignment or arrangement with any creditor of the <i>Contractor</i>, • the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the <i>Contractor</i> or any of its assets; or

	<ul style="list-style-type: none"> • enforcement of any security over any assets of the <i>Contractor</i> • or any analogous procedure or step is taken in any jurisdiction. <p>“Service” means the services to be carried out by the <i>Contractor</i> under Task Orders issued by the <i>Client</i> pursuant to the Contract.</p>
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	<p>In consideration of the <i>Client</i> agreeing to enter into the Contract with the <i>Contractor</i>, the Guarantor irrevocably and unconditionally guarantees and undertakes to the <i>Client</i> that:</p> <ul style="list-style-type: none"> • the <i>Contractor</i> 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 <i>Contractor</i>, the Guarantor shall procure that the <i>Contractor</i> makes good the breach or otherwise cause it to be made good and shall indemnify the <i>Client</i> against any loss, damage, demands, charges, payments, liability, proceedings, claims, costs and expenses suffered or incurred by the <i>Client</i> arising from or in connection with it.
2.2	<p>The Guarantor shall also indemnify the <i>Client</i> against:</p> <ul style="list-style-type: none"> • any costs, losses and expenses (including legal expenses) which may be suffered or incurred by the <i>Client</i> 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 <i>Client</i> if any of the obligations of the <i>Contractor</i> 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 <i>Contractor</i> in an action under the Contract shall likewise be available to the Guarantor

	<p>in a corresponding action under this deed, provided that nothing in this clause shall:</p> <ul style="list-style-type: none"> • 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	<p>The obligations of the Guarantor under this deed are in addition to and independent of any other security which the <i>Client</i> may at any time hold in respect of the <i>Contractor's</i> obligations under the Contract and may be enforced against the Guarantor without first having recourse to any such security.</p>
3.2	<p>The obligations of the Guarantor under this deed are in addition to and not in substitution for any rights or remedies that the <i>Client</i> may have against the <i>Contractor</i> under the Contract or at law.</p>
3.3	<p>The liability of the Guarantor under this deed shall in no way be discharged, lessened or affected by:</p> <ul style="list-style-type: none"> • an Insolvency Event; • any change in the constitution, status, function, control or ownership of the <i>Contractor</i> or any legal limitation, disability or incapacity relating to the <i>Contractor</i> 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 <i>Client</i> to the <i>Contractor</i>; • the assertion or failure to assert or delay in asserting any rights or remedies of the <i>Client</i> or the pursuit of any right or remedy of the <i>Client</i>; • the giving by the <i>Contractor</i> 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 <p>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.</p>

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 <i>Client</i> and the <i>Contractor</i> shall be binding on the Guarantor.
4. Variations to the Contract	
4.1	The Guarantor authorises the <i>Contractor</i> and the <i>Client</i> 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	<p>The Guarantor covenants with the <i>Client</i> that:</p> <ul style="list-style-type: none"> • if a liquidator is appointed in respect of the <i>Contractor</i> and the liquidator disclaims the Contract; or • if the <i>Contractor's</i> employment under the Contract is determined for any reason <p>the liability of the Guarantor under this deed shall remain in full force and effect.</p>
6. Waiver	
6.1	The Guarantor waives any right to require the <i>Client</i> to pursue any remedy (whether under the Contract or otherwise) which it may have against the <i>Contractor</i> 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 <i>Contractor</i> (whether by instituting or threatening proceedings or by way of set-off or counterclaim or otherwise) or otherwise to prove in competition with the <i>Client</i> in respect of any payment made by the Guarantor under this deed nor be entitled in competition with the <i>Client</i> to claim or have the benefit of any security which the <i>Client</i> holds for any money or liability owed by the <i>Contractor</i> to the <i>Client</i> . If the Guarantor shall receive any monies from the <i>Contractor</i> in respect of any payment made by the Guarantor under this deed, the Guarantor shall hold such monies in trust for the <i>Client</i> 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 <i>Contractor</i> under

	the Contract has been performed and observed and until each and every liability of the <i>Contractor</i> 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.

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:	

