



National Highways Limited

Scope

Form of Parent Company Guarantee

Annex 09

CONTENTS AMENDMENT SHEET

[Note to compiler: delete the contents of the Amendments Page prior to issue]

Issue. No.	Revision No.	Amendments	Initials	Date

NATIONAL HIGHWAYS LIMITED
as **Client**

[•]
as Guarantor

PARENT COMPANY GUARANTEE
relating to the **[Contract Title]**

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**”) together the “**Parties**”.

Background

- A) By the Contract, the Client has employed the Consultant to carry out services at [●] as more particularly described in the Contract.
- B) The Guarantor is the **[ultimate]**¹ parent company of the Consultant.
- C) The Guarantor has agreed to guarantee the due performance by the Consultant 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 the contract dated [●] between the Client (1) and the Consultant (2) for the carrying out of services at [●].
- “**Consultant**” means [●] (company no [●]) whose registered office is at [●].
- “**Insolvency Event**” means the Consultant 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:
- (a) the 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 Consultant other than a solvent liquidation or reorganisation of the Consultant;
 - (b) a composition, assignment or arrangement with any creditor of the Consultant;

¹ **Note to Procurement Officer: delete if not applicable.**

- (c) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Consultant or any of its assets; or
 - (d) enforcement of any security over any assets of the Consultant, or any analogous procedure or step is taken in any jurisdiction.
- 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.
- 1.7 Other words and expressions defined in the Contract have the same meanings when used in this deed.

2. Guarantee

- 2.1 In consideration of the Client agreeing to enter into the Contract with the Consultant, the Guarantor irrevocably and unconditionally guarantees and undertakes to the Client that:
 - the Consultant shall perform and observe all its 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 Consultant, the Guarantor shall procure that the Consultant makes good the breach or otherwise causes 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:
 - a) 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
 - b) any loss or liability suffered or incurred by the Client if any of the obligations of the Consultant under the Contract is or becomes illegal, invalid or unenforceable for whatsoever reason as if such obligations were not illegal, invalid or unenforceable provided that the Client shall not recover any more from the Guarantor under the indemnity in this

sub-clause 2.2(b) than the Client would have been entitled to recover from the Consultant under the Contract had the relevant obligations not been illegal, invalid or unenforceable.

- 2.3 Any limitation or defence which would have been available to the Consultant 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:
- a) prejudice or affect any liability of the Guarantor under clause 2.2; nor
 - b) 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 Consultant'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 Consultant 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 Consultant or any legal limitation, disability or incapacity relating to the Consultant 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 Consultant;
 - 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 Consultant 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,

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.

- 3.4 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 Consultant shall be binding on the Guarantor.

4. Variations to the Contract

- 4.1 The Guarantor authorises the Consultant 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:
- a) if a liquidator is appointed in respect of the Consultant and the liquidator disclaims the Contract; or
 - b) if the Consultant'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 Consultant before proceeding against the Guarantor under this deed.

7. Rights of Guarantor against Consultant

- 7.1 The Guarantor shall not by any means or on any ground seek to recover from the Consultant (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 Consultant to the Client. If the Guarantor shall receive any monies from the Consultant 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 Consultant under the Contract has been performed and observed and until each and every liability of the Consultant 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 is to be delivered personally (which includes delivery by courier) or sent by pre-paid recorded or special delivery post to the party concerned at its address set out in this deed or to such other addresses as may be notified by such Party for the purposes of this clause.
- 10.2 Any notice given pursuant to this clause shall be deemed to have been served as follows:
- 10.2.1 if delivered personally, at the time of delivery; and
 - 10.2.2 if sent by recorded or special delivery post, 48 hours after being delivered into the custody of the postal authorities but excluding Saturdays, Sundays and public and bank holidays in England.
- 10.3 In proving service, it will be sufficient to prove that personal delivery was made or that the envelope containing the notice was properly addressed and delivered into the custody of the postal authorities as a pre-paid recorded or special delivery letter.

11. [Agency²]

- 11.1 The Guarantor irrevocably appoints [insert name of Guarantor's agent] [insert UK Address for the Guarantor's agent] as its agent to receive on its behalf in England service of any court proceedings or documents under clause 12.
- 11.2 Such service shall be deemed completed on delivery to such agent in accordance with clause 10 (whether or not it is forwarded to and received by the Guarantor) and shall be valid until such time as the Client has received prior written notice that such agent has ceased to act as agent.
- 11.3 If for any reason such agent ceases to be able to act as agent or no longer has an address in England, the Guarantor shall forthwith appoint a substitute acceptable to the Client and deliver to the Client the new agent's name and address within England.]

12. 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 save that any decision, judgment or award of such courts may be enforced in the courts of any jurisdiction.

² This clause 11 is only to be included where the Guarantor is a company that is not registered in the United Kingdom. If not used, delete the wording and mark it as "Not Used", retaining the numbering of the clause in the document.

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:	
[NAME]	
Director/Secretary:	
[NAME]	