The Form of Contract for Highways Maintenance Services

Service Information

Version 1 February 2013
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# REVISION SCHEDULE

THE FORM OF CONTRACT FOR HIGHWAYS MAINTENANCE SERVICES

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THE FORM OF CONTRACT FOR HIGHWAY
MAINTENANCE SERVICES
SERVICE INFORMATION VER 1 FEBRUARY 2013
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FOREWORD

ABOUT THE HIGHWAYS MAINTENANCE EFFICIENCY PROGRAMME

The Highways Maintenance Efficiency Programme (HMEP) is a sector-led transformation initiative that will maximise returns from investment and deliver efficiencies in highway maintenance services. The Programme started in April 2011 with sponsorship from the Department for Transport and is intended to run until 2018.

The Programme is offering local highway practitioners benefits from different ways of working. The vision is that over time, those involved in highways maintenance delivery, the local authorities as clients and their service providers, be they from the private or public sector will adopt an ambitious and longer-term approach to enable them to:

• Continuously find new and improved ways of delivering services to highway users and managing highways assets,
• Make use of collaborative partnerships to improve processes and outcomes, and
• Deliver a sustainable balance between meeting the needs of highways users, improving quality and minimising costs.

The overall Programme has been developed by the Programme Board through key personnel who support HMEP’s development. This will ensure that:

• The Programme is truly being driven by what the whole sector needs and wants (’by the sector for the sector’),
• The solutions identified by the sector are relevant, realistic, repeatable, scalable and sustainable, and
• HMEP is benefits-led, driving true transformation of the sector with tangible efficiency gains and a lasting legacy.

As a transformation initiative HMEP is targeting the ways local highway authorities conduct their business. It invites the sector to adopt new ways of working to deliver efficiency savings through:

• Collaboration & Change – looking at how alliances between authorities, and clients and their providers, can be formed to deliver efficiencies in the delivery of highway maintenance services. Other projects are looking at changing business processes; for instance by applying LEAN thinking to the processes behind service delivery and how services or processes can be streamlined to realise efficiencies.
• **Procurement, Contracting and Standardisation** – advising on the routes to procurement enabling authorities to determine how their current service is aligned to current thinking and which is the best procurement option to realise their future service ambitions. It also provides the tools so that efficiencies can arise through the use of, for instance, a standardised form of contract and highway maintenance specification which are better aligned to the activities that local highway authorities undertake.

• **Asset Management** – by providing advice to the sector in the form of updated asset management guidance; for both a simplistic and, where appropriate, more complex lifecycle planning tool to determine whole life asset costs, thus moving away from a reactive to a longer-term approach for maintaining highways assets. To provide training specifically targeted at practitioners to help them move towards an asset management approach and to adopt the new HMEP guidance and tools.

• **Benchmarking & Performance** – collecting, sharing and comparing performance data on Customer/Quality/Cost to help both understanding to show how effective local highway authorities are in delivering Value for Money services and drive targeted efficiencies.

Products and tools are being developed for each of these themes and are being designed to be interdependent, but complementary, so that authorities can maximise their returns from their investments.

**ABOUT THIS SUITE OF CONTRACT DOCUMENTS**

This suite of contract documents is part of the HMEP Procurement, Standardisation & Contracting theme. Entering into a contract is a time consuming process and there have been many developments in how they should be undertaken in recent years. This HMEP suite of documents compiles the current thinking around procurement and offers tools by which term maintenance services can be procured. It aims to remove the burden of maintaining the many bespoke forms of contract that authorities use and replace them with standard examples based on current good practice within the sector and is expected to be used in conjunction with the HMEP Standard Specification and Standard Details for Local Highway Maintenance to procure term service maintenance contracts or highway maintenance services. The suite comprises:

- Official Journal of the European Union (OJEU) Procedures and Notes for Guidance,
- Pre-qualification Questionnaire and Notes for Guidance,
- Instructions for Tenderers and Notes for Guidance,
- The Form of Contract for Highway Maintenance Services.


The suite of contract documents takes practitioners through the procurement stages from advertising the intention to procure to the contract documentation needed to formalise the contractual relationships. It guides strategic thinking around the different considerations when
completing these stages. In sequence, the first document, the OJEU, would be used to advertise an impending contract. The second document comprises the Pre-qualification Questionnaire which is used to determine the merits of those service providers that should be invited to tender from those that should not. The third, the Instructions for Tenderers gives the data necessary for the Contractor to return the tender in the required format. Finally, the form of contract which provides the conditions of contract and details the Parties’ contractual obligations and requirements for performance. These documents will give Local Highway Authority officers the guidance they need to make the right choices while maintaining as much flexibility as possible to vary the scope of works.

Standardisation is one of the key facets of the Programme that will contribute to delivering efficiencies. Local highway authorities need to be aware that any variation to these standard forms, particularly the form of contract, has to be considered carefully and will introduce the need to consult, check and seek appropriate contract and or legal advice. The benefits to an authority of not making changes is that there is greater understanding through the use of these common forms that Contractors, in time, will become more familiar and confident in using them, which may lead to more competitive prices. Any change will detract from the benefit of using the common forms and will have to be measured against the perceived benefit of using other highway authority bespoke forms. Every change introduced increases uncertainty which the Contractor has to consider and which potentially leads to an increase in cost. Anything that generates inefficiencies and higher than average costs for construction activities would be considered contrary to the HMEP guiding principles.

STANDARD FORM OF CONTRACT FOR HIGHWAY MAINTENANCE SERVICES

This publication uses the NEC 3 Term Service Contract and comprises the form of agreement, the contract data parts 1 and 2, a template for the Service Information and the Partnering Information as well as associated guidance.

HOW WILL THIS HELP YOU DELIVER MORE EFFICIENT SERVICES?

This suite of documents is aimed at local highway authorities to help guide them when procuring highway maintenance services. It is targeted at the Head of Procurement and Head of Highway level to guide their strategic thinking around the different considerations when completing their contract documents. It is based on the findings from a survey of the sector in October 2011 and examples of current contracts obtained from those authorities that have most recently procured highway maintenance services.

COMMENTS AND FEEDBACK

The HMEP Programme Board would welcome any comments and feedback on this suite of documents so that it may be reviewed, improved and refined to give the sector the best advice possible. If you wish to make a comment, please send an email to highwaysefficiency@dft.gsi.gov.uk with the header ‘Feedback on the HMEP Suite of Contract Documents’.
SERVICE INFORMATION

1. IDENTIFIED AND DEFINED TERMS

In this document the terms identified have the following meanings:

Council Offices are the Employer’s offices for

[..............................],
[..............................] and
[..............................].

Depots are the Employer’s regional depots namely:

[..............................],
[..............................] and
[..............................].

Storage Area(s) comprise the Employer’s storage areas at

[..............................],
[..............................] and
[..............................].

2. DESCRIPTION OF THE SERVICE

2.1 A description of the service provided by the Contractor is provided in Schedule 1.

3. SPECIFICATIONS

3.1 The specifications for the provision of the services are set out in Schedule 2.

4. CONSTRAINTS ON HOW THE CONTRACTOR PROVIDES THE SERVICE

4.1 In Providing the Service, the Contractor does not cause unreasonable noise, disturbance or other pollution and minimises interference to the Affected Property and activities taking place on it or to other property in the vicinity.
4.2 The **Contractor** takes measures to prevent damage loss, injury or nuisance (whether or not to the Affected Property) caused by:

4.2.1 mud, dirt, stones or other material used while Providing the Service,

4.2.2 fuel or lubricant, mud, dirt, stones or other material spilled or deposited on the Affected Property, or,

4.2.3 smoke or dust generated whilst Providing the Service.

4.3 [The **Employer** sets out any further constraints affecting the provision of the service.]

5. **DELEGATION**

5.1 A list of any actions\(^1\) delegated by the **Service Manager** is notified by him to the **Contractor** in accordance with this contract unless later changed in the Task Order.

5.2 The **Employer** may delegate to the **Contractor** the exercise of the functions vested in the **Employer** in accordance with the Table of **Employers** Delegated Statutory Functions set out in Schedule 14.

5.3 The delegation of functions (subject to the restrictions set out in the headings to columns 3 and 4 of the table of delegated functions) is in accordance with the Contracting Out (Highways Functions) Order 2009.

6. **MEETINGS**

6.1 [The **Employer** sets out his requirements for meetings]

7. **NOTICES**

7.1 The address for communications is:

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<table>
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<tr>
<th>Address:</th>
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\(^1\) It is not necessary for the **Employer** to identify all his actions to be delegated before the **Contractor** starts Providing the Service; it is helpful to provide an initial list of actions delegated to others.
For the Contractor

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<tbody>
<tr>
<td>Email:</td>
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<tr>
<td>Address:</td>
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If there is a change of address the Party notifies the other within 5 Working Days.

7.2 A notice issued on a non-working day or outside of normal working hours is treated as if it was issued on the following Working Day.

7.3 Electronic mail is an acceptable form of communication for the purpose of this contract.

7.4 Any notices of adjudication intention to refer a dispute to adjudication and or litigation and any formal steps in either process are sent by pre-paid special or recorded delivery post or delivered by hand and will be deemed to be duly given or made:

- 2 Working Days after being sent by pre-paid special or recorded delivery post or,
- when delivered by hand if a signature has been obtained acknowledging receipt.

8. **CONTRACTOR’S DESIGN**

8.1 [The Employer sets out details of any parts of the service to be designed by the Contractor.]

9. **CONTRACTOR’S PLAN**

9.1 [The Employer sets out his additional requirements relating to provision by the Contractor of the Contractor’s plan.]

10. **QUALITY ASSURANCE**

10.1 [The Employer sets out his requirements relating to quality assurance.]

11. **TESTS AND INSPECTIONS**

11.1 [The Employer sets out his requirements relating to tests and inspections.]
12. **RISK MANAGEMENT**

12.1 The *Contractor* carries out (with assistance from the *Employer*, the *Service Manager* and any relevant *Subcontractors* engaged in relation to the *service* as considered appropriate) an initial risk assessment during the mobilisation period to identify:

12.1.1 potential risks relating to Providing the Service during the first Financial Year (and thereafter for each ensuing Financial Year during the *service period*), the occurrence of which are capable of adversely affecting the time for completion, cost or quality of the *service* during that Financial Year,

12.1.2 the probability of these risks occurring,

12.1.3 a financial estimate of the most likely consequences of each risk occurring,

12.1.4 (without prejudice to the risk allocation under, and terms of, the *conditions of contract*) those risks that are within the control, or are best managed by, the *Employer*, the *Service Manager* or the *Contractor* or any other relevant members of the Supply Chain engaged in relation to the relevant part of the *service* (provided that, for the avoidance of doubt, such risk allocation does not change the contractual risk allocation in this contract).

The results of this initial risk assessment will be included in a risk register produced by the *Contractor* prior to the *starting date* which will become the “Risk Register” for the purposes of this contract.

12.2 Throughout the *service period* in collaboration with the Operations Board and with assistance from the *Employer*, the *Service Manager* and any relevant members of the Strategic Supply Chain the *Contractor* reviews at monthly intervals (or such other intervals as may be agreed by the Parties from time to time) and updates the Risk Register in relation to:

12.2.1 any new risks that have arisen since the date of the last review,

12.2.2 the steps taken to manage, prevent or mitigate previously identified risks,

12.2.3 risks which have been successfully managed, prevented or mitigated (which can be removed from the Risk Register), and

12.2.4 (without prejudice to the risk allocation under, and terms of, the *conditions of contract*) the prioritisation of all continuing risks and agreement of an action plan in respect of, and risk owners for, all risks prioritised as serious risks.

12.3 In accordance with clause 16.3 of the *conditions of contract*, the *Contractor* or the *Service Manager* arrange meetings to review the Risk Register in accordance with paragraph 12.2 above.
12.4 Unless otherwise agreed, the Contractor and the Employer operate a similar procedure to that set out in paragraphs 12.1, 12.2, 12.3, 12.5 and 12.6 in relation to the carrying out of parts of the service under individual Task Orders.

12.5 Throughout the service period the Parties identify and mitigate potential risks affecting the delivery of the service.

12.6 The Contractor arranges progress meetings at monthly intervals (or at such other intervals as may be agreed from time to time by the Parties) with the Operations Board to report on progress in relation to individual Tasks and generally in relation to the performance of the service and the actual and forecast costs of Providing the Service during the relevant Financial Year.

13. ACCESS TO AND USE OF THE AFFECTED PROPERTY

13.1 The Employer provides access to and use of each part of the Area Network to the Contractor as necessary to Provide the Service, subject to any limitations set out in the Network Information in Schedule 11 and the operation of any relevant statutory provisions.

13.2 [With effect from the starting date, the Contractor occupies the [Council Offices] [Depots] [Storage Area(s)] as a licensee under the terms of the licence(s) set out in Schedule 4.]

13.3 [The Contractor enters into leases of the [Council Offices] [Depots] [Storage Area(s)], in substantially the form of the draft leases set out in Schedule 4 (incorporating such amendments as are necessary in the context of each individual [Office] [Depot] [Storage Area]), and in accordance with the terms of Schedule 4.]

13.4 The Contractor and the Employer agree to exclude the Contractor’s rights to security of tenure after the expiry of the relevant lease pursuant to sections 24 to 28 of the Landlord and Tenant Act 1954 pursuant to the terms set out in Schedule 4.

13.5 [The Contractor and the Employer enter into leases of the [Council Offices] [Depots] [Storage Area(s)] as soon as practicable after the date of this contract in accordance with the terms set out in Schedule 4.]

13.6 The Parties review the need for the [Council Offices] [Depots] [Storage Area(s)] during the service period in light of the needs of the service and the continued availability of the relevant premises.

13.7 The Contractor does not use the [Council Offices] [Depots] [Storage Area(s)] for any purpose other than for Providing the Service unless such use (and the terms of such use) is agreed by the Employer in advance, in writing.
13.8 The Employer provides to the Contractor, on or before the starting date, full details of an environmental report or reports setting out (as a minimum) details of ground investigations into any existing contamination at any Depots and/or Storage Areas together with any additions reports or schedules of condition reasonably necessary for the Contractor to properly access its risks in operating from any Depot or using any Storage Area.

14. PRE-PLANNING DELIVERY OF THE SERVICE

14.1 The Medium Term Plan

14.1.1 The Parties prepare the Medium Term Plan with the Employer taking overall responsibility. The Medium Term Plan sets out the priorities for the delivery of the service over a rolling [3/4/5] year period based on the Employer’s expected budget for the service over the same period.

14.1.2 The Medium Term Plan is reviewed by the Strategic Board on an annual basis. The Employer takes account of the requirements of the Strategic Board in relation to the Medium Term Plan.

14.2 The Annual Plan

14.2.1 The Employer is responsible for providing the Annual Plan, in consultation with the Strategic Board.

14.2.2 Before the starting date, the Employer prepares an Annual Plan in respect of the first Financial Year of the service period setting out his plan for the provision of the service during that Financial Year.

14.2.3 Where any work to be provided as part of the service continues beyond the end of the relevant Financial Year, the Annual Plan identifies the extent of the work to be provided during that Financial Year.

14.2.4 During the course of each Financial Year, the Employer is responsible for providing the Annual Plan for the following Financial Year so that a new Annual Plan for the next Financial Year is accepted by the Strategic Board before the start of the next Financial Year.

14.2.5 Each Annual Plan is accepted by the Strategic Board before the start of each Financial Year. A reason for not accepting the Annual Plan is that:

- it does not comply with the Service Information,
- the Annual Plan will not meet the Objectives,
- the plans it shows are not practicable,

*Employer* selects the number of years that match his medium term financial planning period.
• the delivery of the Annual Plan will exceed the Service Budget for the relevant Financial Year or
• the Annual Plan does not address the priorities for the relevant Financial Year agreed by the Strategic Board.

14.2.6 Following acceptance by the Strategic Board the Employer and the Service Manager discuss the Annual Plan and make changes to it to include the matters approved by the Strategic Board in accordance with paragraph 14.2.3 above.

14.2.7 The Annual Plan is based on, and represents development of, the Medium Term Plan.

14.3 Details to be contained in the Annual Plan

14.3.1 The Annual Plan sets out (with as much detail as it is practicable for the Employer to provide) details of the service to be provided during the Financial Year in order to meet the Objectives and within the available Service Budget.

14.3.2 The Employer submits details of any changes to the Annual Plan to the Strategic Board either before or during the course of any Financial Year for acceptance.

14.3.3 The Employer shows on his Annual Plan

• the Financial Year to which it relates,
• the forecast number of Task Orders to be issued,
• a forecast of the total Price for the service (if Option A is used),
• the estimated total cost for the service (if Options C and E is used),
• Identified risk for Providing the Service and
• any other information which the Service Information or the Strategic Board require to be shown on an Annual Plan.

15. PROVISION OF BUDGETARY INFORMATION

15.1 The Employer shares with the Contractor details of the estimated Service Budget (and, to the extent the Employer considers necessary or helpful, the breakdown of the estimated Service Budget between estimated capital and revenue budgets) for the forthcoming Financial Year and for the balance of the Medium Term Plan.

16. CHANGES TO THE ANNUAL PLAN DURING A FINANCIAL YEAR

16.1 Discussion of actual or proposed changes to the Service Budget
The Employer informs the Contractor of any changes to the Service Budget during a Financial Year. The Parties discuss the changes with a view to agreeing whether, and if so, what, changes may be necessary to the provision of the service set out in the Annual Plan and the effect upon the Prices and or forecast Defined Cost. The Parties mitigate the impact of any change in the Service Budget.

16.2 Changes to the service in the Annual Plan which is not the subject of an issued Task Order.

16.2.1 The Service Manager may instruct changes to parts of the service set out in the Annual Plan which are not the subject of an issued Task Order. The changes may reduce or increase the service provided by the Contractor in the Financial Year.

16.2.2 If the changes increase the service to be provided within the Financial Year and the Contractor considers that the services will not be completed within the Financial Year or the Service Budget, the Contractor notifies the Employer.

16.2.3 The Parties work together to agree any changes to the service and the Prices and or forecast Defined Cost. If the Parties fail to agree any changes within 4 weeks of notification by the Contractor (or alternative period agreed between the Parties) the matter is decided by the Strategic Board. If the Strategic Board does not reach a decision at the first meeting either Party may seek resolution of the matter in accordance with the dispute resolution provisions set out in secondary Option W2.

16.3 Changes to the service which is the subject of an issued Task Order

16.3.1 The Service Manager may instruct a change to the service set out in an issued Task Order. The change may reduce or increase the service provided by the Contractor in the relevant Financial Year.

16.3.2 If the change increases the service to be provided by the Contractor within the Financial Year and the Contractor considers that the service will not be completed within the Financial Year or the Service Budget, the Contractor notifies the Employer.

16.3.3 The Parties work together to agree any necessary changes to the service and any change to the Prices and or forecast Defined Cost. If the Parties agree, the Employer issues an additional Task Order or the matter is dealt with by the Service Manager as a compensation event in accordance with clause 60 of the conditions of contract.

16.4 Recording changes

16.4.1 Any changes to the Annual Plan or any existing Task Order and any financial consequences are recorded in writing and the other Party is notified.
17. **OPERATION OF ICT SYSTEMS**

17.1 The *Contractor* implements and maintains an ICT system or systems in connection with the provision of the *service* that is, or are, compatible with, and input relevant information records into, the *Employer*’s ICT system or systems for:

- monitoring the progress and cost of the *service* and progress against the relevant Annual Plan,
- maintaining up to date records of the state and condition of the Area Network, and
- the storage of all reports and records produced in relation to the performance of the *service*.

17.2 All information stored on ICT systems maintained by the *Contractor* in connection with Providing the Service is in a format that can be accessed by the *Employer* and is capable of being transferred to the *Employer* or a third Party at the expiry or earlier termination of this contract. The *Contractor* ensures that all necessary licences are in place in relation to software provided by the *Contractor* under this contract to enable the *Employer* to continue to operate any ICT system or systems utilising such software without infringing any copyright or third Party rights.

17.3 The *Contractor* provides the *Employer* with access to the *Contractor*’s ICT systems and ensures the compatibility of its ICT systems with the *Employer*’s ICT systems. The *Contractor* grants, or procures the grant of, licences to enable the *Employer* to access and use the ICT systems developed, procured or otherwise provided from time to time by the *Contractor* in Providing the Service.

17.4 The *Contractor* complies with the *Employer*’s ICT policies (as the same may be updated from time to time), including but not limited to information security policies and procedures in respect of communications, access controls and the safeguarding of any information and data relating to the *Employer*’s business.

17.5 The *Contractor* stores information and data which relates to the *Employer* and the *service* only as necessary for the *Contractor* to Provide the Service where the *Contractor*:

- stores any such information and data it takes responsibility for preserving the integrity of such information and data and prevents its corruption or loss, and
- backs up any such information and data on a secure system which complies with the *Employer*’s ICT policies (as the same may be updated from time to time).

17.6 The *Contractor* gives appropriate training to its people and, where relevant, any Subcontractors so that when they are Providing the Service they have knowledge of and are competent to use the ICT systems maintained by the *Contractor* and or the *Employer* (as the case may be).
17.7 The Parties may enter into appropriate service level agreements in respect of their respective ICT systems (hardware and or software) during the Contractor's mobilisation period and prior to the starting date.

17.8 Details of the Parties respective ICT systems relevant to Providing the Service are set out in Schedule 5.

18. HEALTH AND SAFETY

18.1 The Contractor provides the Service Manager with details of any serious accident or fatality to any person employed by or contracted to him on the Affected Property as soon as possible after an accident occurs.

18.2 The Contractor reports to the Service Manager details of any notifiable incident that occurs on the Affected Property as soon as possible after the occurrence. Notifiable incidents are those that require reporting to the Health and Safety Executive and or cause a significant delay in provision of the service.

18.3 The Contractor notifies the Service Manager as soon as possible (and in any event within 24 hours) after any accidents or dangerous occurrences which are reportable pursuant to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) arising out of or in connection with the provision of the service.

18.4 If any claim is made against the Contractor he promptly notifies the Service Manager together with full details of the relevant claim.

19. MANAGEMENT OF THE SERVICE

19.1 A two level management structure is proposed, consisting of an Operations Board dealing with the day to day management and a Strategic Board dealing with the strategic development of this contract.

19.2 The Operations Board

19.2.1 The Operations Board meets monthly unless otherwise agreed. The Operations Board comprises five people, three people from the Employer and two people from the Contractor, both being involved in the operational delivery of the contract. The Contractor and the Employer each appoint people to the Operations Board prior to the starting date and ensure that they are able to attend all meetings of the Operations Board. Any replacement person is only accepted with the prior consent of all other members of the Operations Board (such consent not to be unreasonably withheld).
19.2.2 The *Operations Board* is responsible for:

- monitoring and reviewing the performance of the *Contractor* in the delivery of the *service*, in particular, the performance of the *Contractor* against the Key Performance Indicators and the progress of Tasks against their predicted Task Completion Dates,
- making recommendations and observations to the *Contractor* and the *Employer* regarding the operational performance of the *Contractor* and ways in which performance needs to be, or might be, improved,
- liaising with the *Strategic Board* and sharing the results of its monitoring of the *Contractor’s* performance of the *service* with a view to identifying any lessons that can be learned or practices that can be improved upon,
- identifying, assisting, managing and mitigating operational risks, and
- monitoring the effectiveness and implementation of a shared culture and behaviours, considering proposals for improvement, and making recommendations to the *Strategic Board*.

19.2.3 Decisions of the *Operations Board* are made by the majority vote of the people attending each meeting, provided that a minimum of two people from each Party are present. In the event of a tied vote, the *Employer’s* people have a casting vote.

19.2.4 The members of the *Operations Board* act in a spirit of mutual trust and cooperation.

19.3 The *Strategic Board*

19.3.1 The *Strategic Board* meets quarterly unless otherwise agreed. The *Strategic Board* consists of five people comprising three people from the *Employer* and two people from the *Contractor*, being directors or senior managers of the *Contractor* having responsibility for the performance of this contract, but not being involved in the day to day provision of the *service*.

19.3.2 Prior to the *starting date*, the *Employer* and the *Contractor* each appoint people to the *Strategic Board* and ensure that the designated person is able to attend all meetings of the Strategic Board. Any replacement person is only accepted with the prior consent of all other members of the *Strategic Board* (such consent not to be unreasonably withheld).

19.3.3 The *Strategic Board* is responsible for:

- overseeing the *Operations Board* and the performance of this contract to meet the Objectives,
- reviewing and assessing the *Contractor’s* overall performance in providing the *service*,
• reviewing and approving the Medium Term Plan and the Annual Plan,
• ensuring the service is delivered within the Service Budget (subject to any supplement to the Service Budget which the Employer may secure from time to time during a Financial Year),
• implementing policy and procedures necessary for achieving the Objectives,
• deciding upon any issues raised by the Operations Board,
• promoting continuous improvement in the performance of the service and achievement of the Objectives,
• agreeing priorities and targets and year on year improvements in relation to the Key Performance Indicators,
• promoting the development of a shared culture and behaviour based on an integrated team approach and promoting and reinforcing a shared culture and behaviour throughout the service period, and
• deciding on any other matters agreed between the members of the Strategic Board.

19.3.4 Decisions of the Strategic Board are made by the majority vote of the people attending each meeting, provided that a minimum of two people from each Party are present. In the event of a tied vote, the Employer’s people have a casting vote.

19.3.5 The members of the Strategic Board act in a spirit of mutual trust and cooperation.

20. ACCOUNTS AND RECORDS (IF OPTIONS C OR E ARE USED)

[The Employer sets out any additional requirements below for open book cost management and includes details of the accounts and records to be provided by the Contractor and allocation of components of cost.]

20.1 Open book recording of costs

20.1.1 The Contractor keeps detailed records of the Defined Cost incurred to Provide the Service on an “open book” basis, i.e. on the basis that records of Defined Cost are maintained in a fully auditable manner and are made available to the Employer whenever reasonably required for the purposes of verification in connection with the provision of the service. The Contractor keeps such records for a period of 6 years after the service period unless otherwise set out in the Employer’s policies.

20.1.2 The Parties agree that the Contractor will keep the accounts and records of Defined Cost as set out in Schedule 6 subject to any updates to these records and accounts agreed by the Parties at any time during the service period.
20.1.3 The Parties agree that the Contractor provides a breakdown of the Prices and Defined Cost for the service at each assessment date or as otherwise provided in this contract in the form set out in Schedule 7. The Employer may review the form of the breakdown during the service period and discuss any proposed changes with the Contractor. The Contractor complies with all reasonable requests to change the form of breakdown.

20.1.4 If requested by the Employer, the Contractor keeps separate records of all Defined Cost in relation to parts of the service that are, for local authority accounting purposes, treated as revenue and capital funded, provided the Employer has made clear in relevant Task Order(s) which elements are to be treated as revenue or capital funded.

20.2 Access to original vouchers and books of account

20.2.1 The Contractor provides to the Employer or its representatives or agents, full access to and or details of, all original vouchers and books of account necessary to demonstrate its Defined Cost if and when reasonably requested to do so by the Employer.

20.2.2 The Contractor grants to the Employer and its internal audit team authority to enter any premises used by the Contractor at any time and to have access to all correspondence, documents, books, property or other records relating to the provision of the service. The Contractor further agrees that the Employer’s head of finance is entitled to receive such explanation as he or she considers necessary to establish the correctness of any matter under examination.

20.2.3 The Parties bear their own costs in connection with any such access unless the access reveals a material default by the Contractor in which case the Contractor reimburses the Employer its actual cost incurred in relation to the access and investigation.

20.2.4 The Employer may take copies of any material including computer data held by the Contractor relating to the provision of the service and as necessary to verify the accuracy of any accounting statement, charge, computation or claim made pursuant to any of the provisions of this contract.

20.2.5 The Contractor issues to the Service Manager within 12 weeks of the end of each Financial Year, at the cost of the Contractor, a certificate signed by its auditors certifying they are satisfied with the Contractor's financial systems in relation to the recording of financial information relating to the provision of the service in that Financial Year.

20.2.6 The Employer treats the Commercially Sensitive Information listed in the Contract Data part 2 as commercially sensitive and does not disclose it to others.
21. **WORKING WITH THE EMPLOYER AND OTHERS**

21.1 [The Employer sets out his requirements.]

22. **SERVICES AND OTHER THINGS TO BE PROVIDED BY THE EMPLOYER**

22.1 The Employer provides the services, Equipment, Plant and Materials and other things (if any) set out in Schedule 8. The Contractor hands back all such Equipment, Plant and Materials at the end of the service period in good repair and condition (allowing for fair wear and tear).

23. **MOBILISATION AND DEMOBILISATION**

23.1 The Contractor mobilises in order to provide the service with effect from the starting date in accordance with the Mobilisation Plan provided in the Contract Data (Part 2) (the “Mobilisation Plan”).

23.2 The Mobilisation Plan addresses the matters set out in Schedule 9.

23.3 The Contractor receives its Defined Cost of mobilisation up to a maximum sum of £[…………..].

23.4 At the end of the service period or earlier if the Contractor’s obligation to Provide the Service is terminated in accordance with other provisions of this contract, the Contractor co-operates in the transfer of part or whole of the service to the Employer or a replacement contractor.

23.5 Not later than 12 months prior to the expiry of the service period the Contractor provides a demobilisation plan setting out how he proposes to demobilise and handover the provision of the service to the Employer or a replacement contractor (the “Demobilisation Plan”).

23.6 The Demobilisation Plan addresses the matters set out in Schedule 10 and any other matters that the Employer reasonably requires or the Parties agree should be addressed.

23.7 The Demobilisation Plan is prepared by the Contractor and issued to the Employer for acceptance. Reasons for not accepting the Demobilisation Plan are that it will not enable the:

- transfer of the service to the Employer or another contractor without interfering with the timing of the service or impairing the effectiveness of the service,
- Employer to comply with its legal obligations or operational requirements.

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3 The Employer inserts here the maximum amount as stated in the Contractor’s tender.
23.8 The Contractor allows the Employer or incoming contractors to carry out a due diligence review to enable them to draw up proposals for delivery of the service after the transfer.

23.9 Access to the Contractor's premises and people for this review has due regard for the confidentiality of other business and customers of the Contractor. The Contractor allows all reasonable access to its premises and people for this purpose without charge to the Employer.

23.10 The Contractor, on request, transfers or sells to the Employer or incoming contractor any Plant and Materials and Equipment owned by the Contractor that are listed in the Demobilisation Plan and used exclusively to provide the service at the net book value or the open market value whichever is the lowest.

23.11 Where an item of Equipment used exclusively to provide the service is leased, the Employer may instruct the Contractor to transfer the lease of the Equipment to the incoming contractor subject to any necessary consent. The Employer or the incoming contractor will be responsible for the reasonable and proper costs of the Contractor in obtaining any necessary consent.

23.12 Where an item of Equipment is only partially used to Provide the Service the Contractor is under no obligation to sell or transfer or assign any lease of the Equipment but co-operates with the Employer regarding the continued use of the Equipment for an interim period or in an emergency after the termination date until it can be replaced or becomes unnecessary.

23.13 The Contractor co-operates with and provides reasonable assistance to the Employer or incoming Contractor as necessary to allow the service to be carried on without disruption to the Area Network. The Contractor completes the actions and executes any documents and meets all other requirements to implement the Demobilisation Plan.

23.14 The Contractor provides the Employer or incoming contractor with any data in a viable format relating to any work-in-progress in the provision of the service which is necessary to enable the Employer or incoming contractor to provide the service.

23.15 The Contractor co-operates with the Employer and incoming contractor during the handover and this co-operation extends to allowing for access to and providing copies of all documents, reports, summaries and information required to achieve an effective transition to the incoming contractor without disruption to the Employer's operational requirements.

24. ENVIRONMENTAL

24.1 [The Employer sets out his requirements.]
24.2 The **Contractor** uses working methods, equipment, materials and consumables which minimise environmental damage and comply with the **Employer’s** environmental policies from time to time.

25. **COMPLAINTS AND CUSTOMER CARE**

25.1 The **Contractor** provides a prompt response to enquiries, requests and complaints from the public, local councils, councillors, members of parliament and the emergency services and deals efficiently and effectively with customer complaints at all times.

25.2 The **Contractor** notifies the **Employer** of all complaints received and keeps the **Employer** informed with a view to allowing the **Employer** to deal direct where the **Employer** considers it appropriate.

25.3 The **Contractor** responds to and gives notice to the **Employer** in time to enable the **Employer** to respond to (should it wish to deal directly with the complaint) all complaints within a period of 10 Working Days (unless otherwise agreed) from the date the complaint is made.

26. **EMPLOYER’S POLICIES**

26.1 The **Contractor** complies with the **Employer’s** policies as set out in Schedule 13.
SCHEDULE 1 – DESCRIPTION OF THE SERVICE

The service includes the following parts

Service part 1
- Mobilisation
- Management
- Demobilisation

Service part 2
- Emergency response maintenance
- Winter maintenance

Service part 3
- Planned maintenance and improvements

Service part 4
- Schemes

Service part 5
- Professional services including highways related design, traffic engineering, bridge management and design, road safety engineering and asset management

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4 An example is provided. If there is more than one part to the service then they are set out by the Employer. A detailed description of the service is to be provided by the Employer according to the services provided by the Contractor. Service part 2 may include for example, emergency gangs, and responses to road traffic accidents in conjunction with the police, defined specialist repairs, traffic management, winter maintenance operations and making safe including Temporary Vertical Concrete Barriers (TVCB) or similar safety barriers. Service part 4 may include carriageway resurfacing, footway resurfacing, carriageway and footway reconstruction and highways improvement schemes.
SCHEDULE 2 – SPECIFICATIONS RELEVANT TO THE PROVISION OF THE SERVICE
SCHEDULE 3 – TABLE OF THE SERVICE MANAGER’S DELEGATED ACTIONS

The actions of the Service Manager delegated to others are as follows:

<table>
<thead>
<tr>
<th>Clause</th>
<th>Delegated action</th>
<th>Person responsible</th>
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<tbody>
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</table>

5 To be completed by the Employer and attached to each Task Order.
SCHEDULE 4 – PROPERTY PROVISIONS
SCHEDULE 6 – ACCOUNTS AND RECORDS TO BE KEPT BY THE CONTRACTOR
SCHEDULE 7 – SERVICE BREAKDOWN STRUCTURE
SCHEDULE 8 – EQUIPMENT, PLANT AND MATERIALS PROVIDED BY THE EMPLOYER
SCHEDULE 9 – MOBILISATION PLAN

The Contractor’s Mobilisation Plan includes the methodology for implementing the following:

- de-mobilisation of the outgoing Contractor,
- names of key people (organisational structure),
- details of strategic and operational management,
- a risk register with proposed mitigation prepared in conjunction with the Service Manager,
- the mobilisation Programme,
- preparation of an initial Annual Plan (at least for the first full Financial Year if the starting date is part way through a Financial Year),
- completing the delivery of the service for the balance of a Financial Year within the balance of the Service Budget for that Financial Year in which the Contractor commences Providing the Service,
- service delivery arrangements, in particular identifying the requirements for emergency and winter maintenance,
- cost and value management arrangements,
- the Task Plan and Annual Plan preparation and
- communications, protocols for staff, for dealing with elected members and the public.
SCHEDULE 10 – MATTERS TO BE ADDRESSED IN THE DEMOBILISATION PLAN

The Contractor’s Demobilisation Plan includes methodology and procedures (to be issued to the Service Manager for acceptance) relating to the following:

- an inventory of the people used to Provide the Service together with all relevant TUPE information,
- a list of the premises (other than premises owned by the Employer), Equipment, Plant and Materials used to Provide the Service,
- details of premises (other than premises owned by the Employer), People, Equipment, Plant and Materials including,
- whether they are used exclusively for the provision of the service or shared with Others,
- whether any premises are leased or owned,
- the estimated value indicating the net book value or open market value (whichever is the lower) of any premises, Equipment, Plant and Materials used to Provide the Service (other than premises owned by the Employer),
- the extent to which the Contractor recovers the cost of any of the above items under this contract,
- the databases and archive files used to hold the Employer’s data indicating details of size, media and location held,
- the Strategic Supply Chain, other third Party suppliers or subcontractors used as part of the delivery of the service indicating the equipment or services supplied and the volumes involved, and,
- the period of notice required in order for the Contractor to demobilise in accordance with the contract.

Requirements for demobilisation by the Contractor are to be accepted by the Employer.
SCHEDULE 12 – PARENT COMPANY GUARANTEE

DATED 20

(1) [EMPLOYER]

AND

(2) [PARENT COMPANY GUARANTOR]

PARENT COMPANY GUARANTEE

In relation to

[…………………………………………………..] a Highways Services Term Contract between

[Employer] and [Contractor]

dated […………………..]
THIS PARENT COMPANY GUARANTEE is dated [20/….]

BETWEEN:

(1) [COUNCIL] of [………………………………………………………..] (the “Employer”); and

(2) [GUARANTOR] (registered in England and Wales under company number [………………….]) whose registered office is at [……………………………………………………………..] (the “Guarantor”)

NOW IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATIONS

1.1 In this guarantee where the context so admits:

The following expression shall have the following meanings:

“Contract”
means a Highways Improvement and Maintenance Term Contract dated on or about the date of this guarantee between the Employer and the Contractor for the provision of highways services by the Contractor on the Employer’s highway,

“Contractor”
means [insert name of Contractor],

“Expiry”
means an expiry of the “service period” as defined in the Contract,

“Service”
means the highways works and services to be provided by the Contractor in accordance with the Contract.

1.2 Successors in Title

The Employer and the Guarantor shall include both Parties’ successors in title and assigns.

1.3 Headings

The headings in this guarantee are inserted for convenience only and shall be ignored in construing the terms and provisions hereof.

1.4 Joint Tenants

Where there are two or more persons included in the expressions “Guarantor” or “Employer” then such expressions shall include the plural number and any obligations expressed to be made by or with such Party hereunder or pursuant hereto shall be deemed to be made and undertaken by such persons jointly and severally.
2 GUARANTEE AND INDEMNITY

2.1 The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor (which for the purposes of this guarantee shall include any default, occurrence or omission by the Contractor which results in the termination of the Contract or the determination of the Contractor’s employment under the Contract and shall not be limited to a breach per se of any term of the Contract) the Guarantor shall, subject to the provisions of this guarantee, satisfy and discharge the loss, debt, damage, interest, cost or expense sustained or incurred by the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract. For the avoidance of doubt the decision of a court or tribunal of competent jurisdiction or agreement reached between the Contractor and the Employer shall be binding on the Guarantor.

2.2 If the Contractor fails to observe or perform any of its duties or obligations to the Employer under the Contract (which for the purposes of this guarantee shall include any default, occurrence or omission by the Contractor which results in the termination of the Contract or the determination of the Contractor’s employment under the Contract and shall not be limited to a breach per se of any term of the Contract), or if the Contractor fails to pay any sum, loss, debt, damage, interest, cost or expense due from the Contractor to the Employer under or in connection with the Contract, the Guarantor (as a separate and independent obligation and liability from its obligations and liabilities under clause 2.1) shall indemnify the Employer from and against all loss, debt, damage, interest, cost or expense sustained or incurred by the Employer by reason of any such failure or non-payment.

3 AMENDMENTS TO THE CONTRACT

3.1 The Contract may be modified, amended or supplemented in any way (including, but not limited to, the scope of the Service) without the Guarantor’s consent and references to the Contract in this guarantee shall include all such modifications, amendments or supplements whether made before or after the date hereof. The Guarantor’s liability under this guarantee (which includes the Contractor’s duties, obligations and liabilities under the Contract as modified, amended or supplemented) shall not be affected by:

3.1.1 any such modification, amendment or supplement or

3.1.2 any invalidity, avoidance or unenforceability for any reason whatsoever or termination of the Contract or

3.1.3 any waiver, concession, allowance of time, compromise or forbearance given to, or made with, the Contractor. The terms of this guarantee shall apply to the terms of any such compromise as they apply to the Contract.

4 LIMITATION ON GUARANTOR’S LIABILITY

4.1 The Employer hereby agrees that the Guarantor’s liability under this guarantee shall be limited to and shall not exceed the obligations or liabilities assumed by the Contractor under the Contract.
5 ASSIGNMENT

5.1 The Employer shall be entitled to assign the benefit of this guarantee to any Party to whom it assigns its interest under the Contract but not otherwise without the Guarantor’s prior written consent provided the Guarantor and Contractor shall be entitled to receive notice of such assignment in writing within a reasonable period of the assignment taking place.

6 DURATION

6.1 The obligations of the Guarantor under this guarantee shall be released and discharged absolutely upon Expiry save in respect of a demand made in writing by the Employer prior to such date. For the avoidance of doubt the establishment and ascertainment pursuant to clause 2 above of the loss, debt, damage, interest, cost or expense sustained or incurred by the Employer may occur subsequent to such demand which may be validly given notwithstanding any lack of particulars of breach of the Contract or of the loss, debt, damage, interest, cost or expense sustained or incurred by the Employer.

7 JURISDICTION

7.1 This guarantee and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

7.2 The Parties irrevocably agree that the courts of England shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this guarantee or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof this guarantee has been duly executed and delivered as a deed on the date stated above.

EXECUTED as a DEED by
THE EMPLOYER by the signatures of:

Authorised Signatory

Authorised Signatory

EXECUTED as a DEED by
THE GUARANTOR by the signatures of:

Director

Director/Company Secretary
The Employer is to include any policies relevant to the Contractor’s performance of the service; Policies may include (a) whistle blowing (b) complaints (c) data protection (d) freedom of information etc.
### Schedule 14 – Table of Employer’s Delegated Statutory Functions

(To complete, add “Yes” or “Y” to relevant column in relation to each statutory provision listed below.)

<table>
<thead>
<tr>
<th>Statute and section number</th>
<th>Relevant function</th>
<th>Delegation of function authorised subject to Contractor working within Employer’s policy</th>
<th>Employer’s authorisation required in relation to specific exercise of function</th>
<th>Employer retains responsibility for exercise of the function subject to advice from the Contractor on that exercise</th>
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<tbody>
<tr>
<td>Highways Act 1980</td>
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<tr>
<td>37</td>
<td>Highway created by dedication</td>
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<tr>
<td>38</td>
<td>Power to adopt by agreement</td>
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<tr>
<td>41</td>
<td>Duty to maintain</td>
<td></td>
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<tr>
<td>47</td>
<td>Power of magistrat to declare unnecessary highway</td>
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<tr>
<td>48</td>
<td>Power of magistrat to declare highway again</td>
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<tr>
<td>56</td>
<td>Order to repair</td>
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<tr>
<td>58</td>
<td>Defence for non-repair</td>
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<td>59</td>
<td>Recovery of expenses due to extraordinary traffic</td>
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<td>60</td>
<td>Liability of others for alternative routes</td>
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<td>62</td>
<td>Power to improve highways</td>
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<tr>
<td>64</td>
<td>Dual carriageways and roundabouts</td>
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<tr>
<td>65</td>
<td>Cycle tracks</td>
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<tr>
<td>66</td>
<td>Footways and guard-rails</td>
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<td>68</td>
<td>Refuges</td>
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<td>69</td>
<td>Subways</td>
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<tr>
<td>70</td>
<td>Footbridges</td>
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</tbody>
</table>

*The Employer deletes this table if it is not used.*
<table>
<thead>
<tr>
<th></th>
<th>Function</th>
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<tbody>
<tr>
<td>71</td>
<td>Margins for horses</td>
</tr>
<tr>
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<td>Widening of highways</td>
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<td>75</td>
<td>Varying of widths</td>
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<td>Levelling of highways</td>
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<td>78</td>
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<td>Prevention of obstruction to view at corners</td>
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<td>80</td>
<td>Power to fence</td>
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<td>81</td>
<td>Provision of boundary posts</td>
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<td>82</td>
<td>Provision of cattle grids</td>
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<td>83</td>
<td>Removal of cattle grids</td>
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<td>84</td>
<td>Maintenance of cattle grids</td>
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<td>91</td>
<td>Construction of bridges</td>
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<td>92</td>
<td>Reconstruction of bridges</td>
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<td>93</td>
<td>Powers to make orders for private bridges</td>
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<td>Powers to enter into agreements with bridge owners</td>
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<td>Supplementary provisions as to orders for bridges</td>
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<td>96</td>
<td>Powers to plant trees, grass etc.</td>
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<td>97</td>
<td>Lighting of highways</td>
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<td>98</td>
<td>Delegation of lighting functions</td>
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<td>Metalling of highways</td>
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<td>Drainage of highways</td>
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<td>101</td>
<td>Power to fill in roadside ditches etc.</td>
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<td>102</td>
<td>Provision of works for protecting highways</td>
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<td>103</td>
<td>Provision of posts to indicate flood water</td>
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<td>104</td>
<td>Mitigating nuisance of dust</td>
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<td>115</td>
<td>Provision of amenities on certain highways</td>
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<td>--------------------------------------------</td>
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<tr>
<td>116</td>
<td>Stopping up of highway</td>
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<tr>
<td>122</td>
<td>Power to make temporary diversions</td>
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<td>124</td>
<td>Stopping up of private access</td>
</tr>
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<td>125</td>
<td>Further powers to stop up private access</td>
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<td>126</td>
<td>Provisions supplementary to Sections 124 and 125</td>
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<td>127</td>
<td>Stopping up access by agreement</td>
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<td>128</td>
<td>Penalty for using access</td>
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<td>129</td>
<td>Further provisions with respect to accesses</td>
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<td>131</td>
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<td>132(1)</td>
<td>Unauthorised marks on highways</td>
</tr>
<tr>
<td>133</td>
<td>Damage to footways of streets by excavations</td>
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<td>137</td>
<td>Penalty for obstruction</td>
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<tr>
<td>138</td>
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<tr>
<td>139</td>
<td>Placing of builder’s skips</td>
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<tr>
<td>140</td>
<td>Power to require owner of skip to remove or reposition it</td>
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<tr>
<td>141</td>
<td>Restriction on planting of trees etc. in or near carriageway</td>
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<tr>
<td>142</td>
<td>Licence to plant trees, shrubs etc. in a highway</td>
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<td>143</td>
<td>Power to give notice requiring removal of structures from highways</td>
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## Schedule 14 – Table of Employer’s Delegated Statutory Functions

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### Road Traffic Regulation Act 1984

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**New Roads and Street Works Act 1991**

<p>| 54 | Advance notice of certain works and compliance with requirements imposed by the street authority |
| 55 | Notice of <em>starting date</em> of works and prohibition on starting works without notice except with the consent of the street authority |
| 57 | Notice of emergency works |
| 60 | General duty of undertakers to cooperate with respect to the execution of street works |
| 61 | Protected Streets |
| 65 | Safety Measures |
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| 67 | Qualifications of supervisors and operatives |
| 68(1) | Undertaker to afford reasonable facilities to the street authority |
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| 80 | Duty to inform undertakers of location of apparatus |
| 81 | Duty to maintain apparatus |</p>
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**Cycle Tracks Act 1984**

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**Traffic Calming Act 1992**

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**Town Police Clauses Act 1847**

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ACKNOWLEDGEMENTS

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