

 **FRAMEWORK AGREEMENT**

 **FORM OF AGREEMENT**

**Between**

**The OFFICE FOR NUCLEAR REGULATION (ONR)**

**And**

**TUV SUD LTD t/s NUCLEAR TECHNOLOGIES**

**(‘the Contractor’)**

**OFFICE FOR NUCLEAR REGULATION**

**TECHNICAL SUPPORT SERVICES LOT 2**

**FORM OF AGREEMENT**

**THIS AGREEMENT** is made between:

(1) **THE OFFICE FOR NUCLEAR REGULATION** (‘ONR’), a body corporate created by statute, with its principal office at Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS (hereinafter called ‘ONR’ of the one part) and

(2) **TUV SUD LTD trading as Nuclear Technologies**, company registration number SC215164 and whose registered office is at Napier Building, Scottish Enterprise Technology Park, East Kilbride, Glasgow, G75 0QF (hereinafter ‘the Contractor’ of the other part), in accordance with the details, terms and conditions stated herein.

**WHEREAS**

ONR and the Contractor wish to enter into a relationship whereby ONR may, as required, engage the Contractor to provide technical support services from time to time.

**IT IS AGREED** that

ONR and the Contractor enter into a framework agreement details of which are set out within this Agreement and the Framework Information, incorporating the terms set out within.

This Agreement shall commence on 01 November 2018 or the date of the last signing of this Agreement, whichever is the later.

The Framework Agreement documentation shall be construed as mutually explanatory of one another. In the event of a conflict between any of the documents comprising the Agreement, the order of precedence shall be as follows:

1. Schedule A - This Form of Agreement;
2. Schedule B - The Framework Management Information;
3. Schedule C - The ONR Call-Off Contract Terms and Conditions;
4. Schedule D - The Non-Disclosure Agreement.

**IN WITNESS WHEREOF**, these presents on this page together with the documents referred to above are executed as a deed as follows:

**SUBSCRIBED** for and on behalf of The Office for Nuclear Regulation

At Redgrave Court, Merton Road, Bootle, L20 7HS

On the day of November 2018 by:

…………………………………………………….. Chief Executive

…………………………………………………….. Full Name

before this witness:

…………………………………………………….. Signature

…………………………………………………….. Full Name

**SUBSCRIBED** for and on behalf of TUV SUD LTD trading as Nuclear Technologies (‘the Contractor’)

At Napier Buildings, Scottish Enterprise Technology Park, East Kilbride, Glasgow, G75 0QF

On the day of November 2018 by:

…………………………………………………….. Insert Title

…………………………………………………….. Full Name

before this witness:

…………………………………………………….. Signature

…………………………………………………….. Full Name

**THE OFFICE FOR NUCLEAR REGULATION**

**TERMS OF THE FRAMEWORK AGREEMENT**

**Table of Contents**

1 Definitions and Interpretation

2 The Parties’ obligations

3 Interpretation

4 Changes to the Framework Information

5 Subcontracting and Collateral Warranty

6 Entire Agreement

7 Dispute Resolution Procedure

8 Limitation of liability

9 Agreement Period

10 Work outstanding at the end of the Agreement Period

11 Call-Off Process

12 Non-Solicitation

1. Definitions and Interpretation
	1. In this Contract, unless the context otherwise requires the following words and phrases shall have the following meanings:
		1. “**Framework Agreement**” or “**Agreement**” means this framework agreement between ONR and the Contractor formed by the Form of Agreement, the Terms of the Framework and the Framework Information.
		2. “**Call-Off Contract**” means any and all contract(s) concluded between ONR and the Contractor in respect of a particular services provision which will be in the terms set out in Schedule One to Four of Schedule C of this Framework Agreement.
		3. “**Charges**” means all charges, fees, expenses, paid or payable (including charges due to become payable) to the Contractor (calculated prior to any deductions that may be made in the Contractor’s favour), plus any late payment interest properly chargeable thereon under any and all Call-Off Contracts (whether such Call-Off Contracts extend beyond the term of this Agreement or otherwise);
		4. “**Default**” means any default, act, omission, event or circumstance in connection with this Framework Agreement or any Call-Off Contract in respect of which Liability arises;
		5. “**Liability**” means liability arising out of or in connection with this Framework Agreement or any Call-Off Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or a failure to perform or delay in performance of, any of the party's obligations under this Framework Agreement or any Call-Off Contract, in each case howsoever caused including (without limitation) if caused by negligence;
		6. “**Pricing Documents**” means the documents containing the agreed rates and fees which will used to construct the cost of service provision and the charges that will apply to the Call-Off Contract;
		7. “**Intellectual Property Rights**” means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database, rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
		8. “**Framework Scope**” means the scope of service that may be provided under this Framework Agreement and which is set out within Schedule A of the Award (ITT) Stage procurement documentation.
		9. “**Framework Management Information**” means the information and obligations of the Parties in the management, management of processes and requirements of the Framework Agreement.
		10. “**Framework Year**” means each 12 (twelve) month period commencing either on the date set out in clause 9.1 or on the anniversary of such date, provided that in the event of expiry or termination of the Framework Agreement, “Framework Year” shall mean the period of 12 (twelve) months immediately prior to date of such expiry or termination of this Agreement;
		11. “**The Parties**” are ONR and the Contractor.
2. The Parties’ Obligations

2.1 When ONR requires services to be carried out within the scope, it considers and applies the Call-Off Process [Section 6 of the Framework Management Information refers]. ONR is not obliged to request any quotations from the Contractor or to issue any Call-Off Contracts to the Contractor.

1. Interpretation

3.1 In this Framework Agreement save where the context otherwise requires, any reference to any enactment, order, regulation or similar instrument, statue or statutory provision shall be construed as a reference to the enactment, order, regulation, or other instrument, statute or statutory provision as amended, replaced, consolidated or re-enacted.

3.2 In this Framework Agreement, words preceding “such as”, “without limitation”, “include”, “includes”, “including”, “including but not limited to” and “included” or similar shall be construed without limitation by the words which follow such words.

1. Changes to the Framework Management Information

4.1 The Framework Management Information may be changed with the agreement in writing by both ONR and the Contractor (together ‘the Parties’).

1. Subcontracting

5.1 Where the value of subcontract services exceeds £100,000.00 (including VAT) or where requested by ONR, the Contractor shall, immediately on appointment of the subcontractor, execute in favour of ONR a warranty in terms mutatis mutandis of the Collateral Warranty appended at Appendix 1 (or such other form agreed by ONR). The Contractor is required to deliver a copy of the relevant subcontract with each Collateral Warranty to ONR within sixty days of the ONR Call-Off Contract being awarded.

1. Entire Agreement

6.1 This Framework Agreement supersedes any previous agreement between the Parties in relation to matters dealt with herein and represents the entire understanding between the Parties in relation thereto. This is entirely without prejudice to the terms of any Call-Off Contracts instructed pursuant to this Framework Agreement.

1. Dispute Resolution Procedure

7.1 During the Agreement Period, either the Contractor or ONR may wish to resolve an issue arising from the Framework Agreement or Call-Off Contract by escalating such matter to the ONR Framework Manager and the Contractors Framework Manager. The Parties are encouraged to adopt this approach to:

1. Prevent protracted negotiations and discussions;
2. Promote positive debate and agreement of the matter;
3. Avoid the matter becoming a dispute;
4. Resolve a dispute prior to dispute resolution prescribed within the Call-Off Contract.

The request to escalate any outstanding matter arising out of the Framework Agreement or Call-Off Contract must be expressly provided by the Framework Manager of the referring party to the Framework Manager of the other party.

Upon receipt of such a referral, the Framework Manager shall respond to the referring Framework Manager within two weeks by advising who the outstanding matter has been escalated to within the respective organisation. Failure by the Framework Manager to respond within the two week period shall not be construed in any way as agreement.

In the event that the matter remains unresolved after escalation, the referring party may request a further escalation to Senior Officers. Nothing in this escalation process removes or limits the Contractors right to pursue legal remedies to resolve any breach or dispute arising out the Agreement or Call-Off contract.

1. **Limitation of Liability (Framework Agreement)**
	1. Nothing in this Framework Agreement shall exclude or restrict the Liability of either party to the other for death or personal injury resulting from negligence or for fraudulent misrepresentation or in any other circumstances where Liability may not be limited under any applicable law.
	2. Subject to clause 8.1 of this Framework Agreement, and subject always to clauses 10.1, 10.2 and 10.4 of the Call-Off Contract terms, the maximum aggregate Liability of the Contractor to ONR in relation to any and all Defaults occurring in any Framework Year will be limited to the greater of £2,500,000 (two million five hundred thousand pounds sterling for Lot 2 (£2.5m) and 300% (three hundred percent) of the total Charges in respect of the applicable Framework Year. In respect of any and all Defaults occurring after the expiry or termination of this Framework Agreement, the applicable Charges for the purpose of the calculation in this clause 8.2 shall be the Charges in respect of the twelve month period immediately preceding the relevant Default.
	3. Subject to clause 8.1, ONR shall not have any Liability to the Contractor whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Framework Agreement, save as set out in any Call-Off Contract.
	4. The provisions of this clause 8 shall survive the termination or expiry of this Framework Agreement, however arising.
2. **Agreement Period**

* 1. This Agreement shall be for a period of four years commencing 01 November 2018.

**10 Work outstanding after the end of the Agreement Period**

10.1 Unless otherwise agreed in writing where any services being carried out by the Contractor is unfinished at the end of this Agreement Period, the services shall be completed by the Contractor at the same price and under the same terms and conditions applicable at the end of this Agreement Period.

**11 Call-Off Process**

11.1 ONR shall select suppliers for Call-Off Contracts using one of two call-off processes (i) direct award following a capability assessment where the estimated value of services does not exceed £100,000.00 (including VAT) or (ii) secondary competition for all services where the estimated value of the services exceed £100,000.00 (including VAT). These call-off processes are described in further detail in Section 6 of Schedule B (Framework Management Information).

**12** **Non-Solicitation**

12.1 The Contractor and ONR acknowledge that each party has a legitimate interest in preserving the availability and stability of staff and undertakes that while performing any services under this contract the Parties shall not offer employment to any personnel or the parties working under this contract except with the consent of their then current employer unless the member of personnel applies under their own volition to an open and fair recruitment competition.

**Appendix 1**

**Collateral Warranty Agreement**

|  |
| --- |
| **Dated**: 20181. [SUBCONTRACTOR]
2. OFFICE FOR NUCLEAR REGULATION
3. [CONTRACTOR]
 |
| **Sub-contractor Warranty**  |
| relating to [SPECIFY] |

**THE PARTICULARS**

|  |  |  |
| --- | --- | --- |
| **Date of this Deed** | **:** |  |
| **The Subcontractor** | **:** | [NAME] [(registered number [number])] [whose registered office is at] [of] [Address]  |
| **The Beneficiary** | **:** | Office for Nuclear Regulation, a body corporate created by statute, with its principal office at Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS |
| **The Contractor** | **:** | [NAME] [(registered number [number])] [whose registered office is at] [of] [Address]  |
| **The Main Contract** | **:** | the contract dated [DATED] made between the Contractor and the Beneficiary |
| **The Primary Services** | **:** | the services to be provided by the Contractor in accordance with the provisions of the Main Contract as more particularly set out in the Main Contract |
| **The Subcontract** | **:** | the contract dated [DATED] made between the Contractor and the Subcontractor |
| **The Subcontract Services** | **:** | the part of the Primary Services specified in the Subcontract |
| **Liability Period** | **:** | the period from the date of the Subcontract until no less than 6 years after completion of the Subcontract Services |
| **Professional Indemnity Insurance**  | **:** | professional indemnity insurance with a minimum limit of indemnity of not less than [words] million pounds Sterling (£[figures]) for any one occurrence or series of occurrences arising out of any one event |

**THIS DEED** is made on the date set out in the Particulars

**BETWEEN:**

1. the Subcontractor;
2. the Beneficiary; and
3. the Contractor.

**BACKGROUND**:

1. In accordance with the Main Contract, the Beneficiary has appointed the Contractor to provide the Primary Services.
2. In accordance with the Subcontract the Contractor has appointed the Subcontractor to carry out and complete the Subcontract Services.
3. The Subcontractor is obliged under the Subcontract to give a warranty in this form in favour of the Beneficiary.

**OPERATIVE PROVISIONS**

1. DEFINITIONS

The words and expressions defined in the Particulars shall have the same meaning throughout this Deed and references to the Particulars and clauses are to the Particulars, and clauses of this Deed.

1. CONSIDERATION

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Subcontractor in the event that it is requested, receipt of which the Subcontractor acknowledges.

1. SUBCONTRACTOR’S DUTIES UNDER THE SUBCONTRACT

The Subcontractor warrants to the Beneficiary that it has performed and shall continue to perform its duties under the Subcontract in all material respects in accordance with the Subcontract and that it has exercised and shall continue to exercise the level of reasonable skill, care and diligence which would be expected of a subcontractor holding itself out as competent in performing works or providing services in relation to schemes of similar nature, scope and size to the Subcontract Services.

1. PROFESSIONAL INDEMNITY INSURANCE
	1. The Subcontractor by this Deed covenants with the Beneficiary that it has taken out and shall maintain Professional Indemnity Insurance for the duration of the Liability Period in relation to the Subcontract Services, provided always that:
		1. if such insurance is not available to the Subcontractor at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Subcontractor), the Subcontractor and the Beneficiary shall meet, and the Subcontractor shall outline the steps it intends to take to manage such risks and the parties shall use reasonable endeavours to agree a method of managing such risks;
		2. the Subcontractor shall provide the Beneficiary with reasonable evidence that the policies referred to in this Clause 44 are in full force and effect together with a summary of the policy terms and conditions.
2. NO APPROVAL

The Subcontractor’s liabilities under this Deed shall not in any way be reduced or extinguished by reason of any inspection or approval of any documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary’s benefit or on its behalf.

1. ASSIGNMENT

The Beneficiary may, without the consent of the Subcontractor and without prejudice to the provisions of Clause 12, assign the benefit of and its benefits and rights under this Deed to any person by way of absolute legal assignment, on not more than two occasions only. The Beneficiary shall give the Subcontractor notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Subcontractor shall not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

1. NOTICES

Any notice, approval, request or other communication to be given by either party under this Deed shall be in writing and shall be sufficiently served if sent by hand, by fax or by post to the registered office or if there is none the last known address of the party to be served. Any notice, approval, request or other communication sent by hand shall be deemed to be served on the date of delivery and if sent by fax shall be deemed to be served in full at the time recorded on the fax sheet, provided that if sent by hand or fax is sent after 4.45p.m. on any day it shall be deemed to be served on the next working day. Any notice, approval, request or other communication sent by post shall be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

1. OTHER RIGHTS AND REMEDIES

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Subcontractor including, without limitation, any remedies in negligence.

1. LIMITATION
	1. The Subcontractor has no liability under this Deed which is greater or of longer duration than it would have had if, in lieu of this Deed, the Beneficiary had been a party to the Subcontract as joint employer, provided that the Subcontractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Subcontractor from the Contractor.
	2. The Subcontractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Subcontract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Subcontract as joint employer.
	3. The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the Liability Period has come to an end.
	4. The Subcontractor shall not by reason of this Deed have any liability to the Beneficiary for delay in completion of the Subcontract Services or any part of them.
2. THIRD PARTY RIGHTS

Any person who is not a party to this Deed will have no right to enforce any of the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

1. GOVERNING LAW AND JURISDICTION
	1. This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by English Law.
	2. The parties agree that the courts of England and Wales shall have exclusive jurisdiction to determine any dispute arising out of or in connection with this Deed (including (without limitation) in relation to any non-contractual obligations). The parties irrevocably submit to the jurisdiction of those courts.
2. STEP-IN RIGHTS
	1. Subject to Clause 12.7, the Subcontractor shall not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Subcontract or its engagement under it or discontinue or suspend the performance of any duties or obligations under the Subcontract, without first giving to the Beneficiary not less than twenty working days prior written notice specifying the Subcontractor’s grounds for terminating or treating as terminated or repudiated the Subcontract or its engagement under it or discontinuing or suspending its performance of the Subcontract and stating the amount (if any) of monies outstanding under the Subcontract. Within such period of notice:
		1. the Beneficiary may give notice to the Subcontractor expressly confirming its intention to comply with Clause 12.1.3 and that the Beneficiary shall become the employer under the Subcontract to the exclusion of the Contractor and, upon giving such notice, that shall be the case and the Subcontract shall be and remain in full force and effect notwithstanding any of the grounds in the Subcontractor’s notice under Clause 12.1; and
		2. if the Beneficiary has given notice under Clause 12.1.1 or under Clause 12.3, the Beneficiary shall then as soon as practicable remedy any outstanding breach by the Contractor; and
		3. if:
			1. the Beneficiary has given notice under Clause 12.1.1 then from the date of the Subcontractor’s notice; or
			2. the Beneficiary has given notice under Clause 12.3 then from the date of the Beneficiary’s notice,

the Beneficiary shall, by Clause 12.1.1, become responsible for all sums properly payable to the Subcontractor under the Subcontract and for the observance and performance of all of the other duties and obligations on the part of the Contractor to be observed and performed under the Subcontract accruing due after the service of such Subcontractor’s notice or Beneficiary’s notice (as applicable) but the Beneficiary shall in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Subcontract.

* 1. Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Subcontractor the Beneficiary shall not be under any obligation to the Subcontractor nor shall the Subcontractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given notice to the Subcontractor under either Clause 12.1.1 or Clause 12.3.
	2. The Subcontractor further covenants with the Beneficiary that if requested by the Beneficiary by notice expressly confirming the Beneficiary’s intention to comply with Clause 12.1.3 and subject to Clause 12.1.2 and Clause 12.1.3, it shall accept the instructions of the Beneficiary to the exclusion of the Contractor in respect of the Subcontract Services upon the terms and conditions of the Subcontract. The Beneficiary shall then become the employer under the Subcontract to the exclusion of the Contractor and the Subcontractor shall, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Contractor under the Subcontract.
	3. Where the Subcontractor has given rights in relation to the Subcontract similar to those contained in this Clause 12 to any other person then if both the Beneficiary and any such other person serve notice under Clause 12.1 or Clause 12.3 or its equivalent the notice served by the Beneficiary shall prevail.
	4. The Contractor acknowledges that the Subcontractor shall be entitled to rely on a notice given to the Subcontractor by the Beneficiary under Clause 12.3 as conclusive evidence that the Beneficiary is entitled to serve such notice.
	5. The Beneficiary may by notice to the Subcontractor appoint another person to exercise its rights under this Clause 12 subject to the Beneficiary remaining liable to the Subcontractor as guarantor for its appointee in respect of its obligations under this Deed.
	6. Where the Subcontractor is seeking to exercise a right to suspend the performance of any duties or obligations under the Subcontract as a result of non-payment or in accordance with s112 of the Housing Grants, Construction and Regeneration Act 1996, the Subcontractor shall give to the Beneficiary notice of its intention so to do at the same time as it serves notice on the Contractor.
	7. Notwithstanding the other provisions of this Clause 12, if the Subcontract has for any reason been terminated prior to receipt by the Subcontractor of a notice from the Beneficiary served under Clause 12.1.1 or Clause 12.1.3, the Subcontractor shall on receipt of any such notice from the Beneficiary enter into a new subcontract with the Beneficiary on the same terms as the Subcontract to continue the Subcontract Services in all respects as if the Subcontract had been transferred to the Beneficiary in accordance with the provisions of this Clause 12.

**THIS DOCUMENT** is executed as a deed and delivered on the date stated at the beginning of this Deed.

[*ALL PARTIES TO EXECUTE*]