

Schedule 17

Parent Company Guarantee

DATED _____ **20[]**

[Insert the name of the Guarantor] (1)

AND

THE SECRETARY OF STATE FOR (2)
DEFENCE

DEED OF GUARANTEE

relating to BATCM/0322 MULTI-MODE
RADIO CONTRACT

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THIS DEED OF GUARANTEE is made the day of 20[]

BETWEEN:

- (1) [Insert the name of the Guarantor] [a company incorporated in England and Wales with number [] whose registered office is at [insert details of the Guarantor's registered office here]] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("**Guarantor**"); in favour of
- (2) **THE SECRETARY OF STATE FOR DEFENCE** ("**Beneficiary**")

WHEREAS:

- (A) It is a condition of the Guaranteed Agreement (defined below) that [Insert details of the Contractor] ("**Contractor**") procure the execution and delivery by the Guarantor of this Deed of Guarantee to the Beneficiary.
- (B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Contractor, to guarantee the due performance by the Contractor of all of the Contractor's obligations under the Guaranteed Agreement.
- (C) It is the intention of the parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1 Definitions and Interpretation

1.1 In this Deed of Guarantee:

- 1.1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.1.2 the words and phrases below shall have the following meanings:
 - 1.1.2.1 "**Affiliate**" means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company", "parent undertaking" and "subsidiary" shall have the meaning given to them in section 1159 and section 1162 of the Companies Act 2006 and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of (i) another person (or its nominee), by way of security or in connection with the taking of security, or (ii) its nominee;
 - 1.1.2.2 "**Expiry Date**" means the Contract Period of the Guaranteed Agreement plus six (6) years;
 - 1.1.2.3 "**Guaranteed Agreement**" means [Insert details of the Guaranteed Agreement]; and

- 1.1.2.4 **“Guaranteed Obligations”** means all obligations, representations, warranties, duties and undertakings of the Contractor to the Beneficiary under, ancillary to or calculated by reference to the Guaranteed Agreement (as varied from time to time) and **“Guaranteed Obligation”** means any one of them.
- 1.1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, supplemented, substituted or novated from time to time;
- 1.1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.1.6 the words “other” and “otherwise” are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.1.9 unless the context otherwise requires, any phrase introduced by the words “including”, “includes”, “in particular”, “for example” or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.1.10 references to clauses are, unless otherwise provided, references to clauses of this Deed of Guarantee; and
- 1.1.11 references to liability are to include any liability whether actual, contingent, present or future.

2 Guarantee and Indemnity

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Contractor duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Contractor to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon receipt of a demand from the Beneficiary in accordance with clause 4.2 below, to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become

payable by the Contractor to the Beneficiary pursuant to the Guaranteed Agreement or in respect of the Guaranteed Obligations.

- 2.3 If at any time the Contractor shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon receipt of a demand from the Beneficiary in accordance with clause 4.2 below, it shall, at the cost and expense of the Guarantor:

2.3.1 fully, punctually and specifically perform (either itself or, with the consent of the Beneficiary which shall not be unreasonably withheld or delayed, and provided that the Guarantor will nonetheless remain fully responsible for the performance of the Guaranteed Obligations, by an Affiliate or other third party) such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and be liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and

2.3.2 indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including all court costs and all legal fees on a solicitor and own client basis, together with any disbursements) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Contractor to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Contractor under the Guaranteed Agreement.

- 2.4 As a separate and independent obligation, the Guarantor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including all legal costs and expenses on a solicitor and own client basis, together with any disbursements), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any Guaranteed Obligation is or becomes unenforceable, invalid or illegal as if such Guaranteed Obligation had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Contractor's liability would have been if the Guaranteed Obligation had not become unenforceable, invalid or illegal.

- 2.5 [The parties named as the Guarantor shall be jointly and severally liable for the obligations and liabilities of the Guarantor herein contained or arising out of this Deed of Guarantee and all references herein to the Guarantor shall be construed as references to any one or more or all of them and the Beneficiary may take action against ,or release or compromise the liability of any one or more of them ,or grant time or other indulgence to any one or more of them without affecting the liability of any of the others.] [***Delete if there is a single Guarantor***]

3 Obligation to enter into a new contract

- 3.1 If a Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Contractor, or if a Guaranteed Agreement is disclaimed by a liquidator of the Contractor or the obligations of the Contractor are declared to be void or voidable for any reason, then the Guarantor shall, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as that Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall

be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4 Demands and Notices

- 4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

[Address of the Guarantor in England and Wales]

[Facsimile Number]

[For the Attention of]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- 4.2 Any demand purported to be served on the Guarantor under this Deed of Guarantee shall only be valid in so far as it:

4.2.1 states the amount or amounts claimed (identifying new amounts claimed and the total of amounts claimed when aggregated with all previous amounts claimed under this Deed of Guarantee);

4.2.2 is signed by an authorised signatory of the Beneficiary.

- 4.3 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served if:

4.3.1 delivered personally, at the time of delivery;

4.3.2 posted by pre-paid first class post, recorded delivery or registered post, three (3) Working Days from the date of posting; or

4.3.3 sent by facsimile, on the day of transmission if sent before 16:00 hours of any Working Day and otherwise at 09:00 hours on the next Working Day and provided that, at the time of transmission of a fax, an error-free transmission report has been received by the sender.

- 4.4 In proving service, it shall be sufficient to prove that the envelope containing the notice or demand was addressed to the relevant party at its address previously notified for the receipt of notices or demands (or as otherwise notified by that party in writing) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery or registered post, or that the notice was transmitted by fax to the fax number of the relevant party at its fax number previously notified for the receipt of notices (or as otherwise notified by that party in writing).

- 4.5 Any notice or demand purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5 Beneficiary's Protections

- 5.1 The Guarantor's liability under this Deed of Guarantee shall not be discharged or released from this Deed of Guarantee in whole or in part or otherwise diminished or affected by any act or omission of the Beneficiary or any other event or circumstance which might otherwise discharge or release the Guarantor to any extent or affect (or provide any defence in respect of) its obligations under this Deed of Guarantee, including (without prejudice to the generality of the foregoing) by any:
- 5.1.1 arrangement made between the Contractor and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor); or
 - 5.1.2 amendment to, or extension, waiver (in whole or in part) or termination of the Guaranteed Agreement (in each case whether with or without the assent of the Guarantor); or
 - 5.1.3 amendment, termination, forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor); or
 - 5.1.4 arrangement or agreement made between the Beneficiary and the Contractor or a receiver, administrative receiver, administrator, liquidator or similar officer of the Contractor.
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations.
- 5.3 This Deed of Guarantee shall not be discharged by any partial performance (except to the extent of such partial performance) by the Contractor (or any other entity acting on its behalf) of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee.
- 5.4 This Deed of Guarantee shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement or other incapacity, of the Contractor, the Beneficiary, the Guarantor or any other person.
- 5.5 If, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Contractor for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof.
- 5.6 The rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.7 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Contractor of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same or any other Guaranteed Obligation.

- 5.8 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Contractor, the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Contractor, the Guarantor or any third party, or to take any action whatsoever against the Contractor, or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.9 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.10 Any waiver by the Beneficiary of any terms of this Deed of Guarantee or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.11 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made to the extent so voided, set aside or refunded.
- 5.12 The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6 Rights of Subrogation

- 6.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Contractor and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
- 6.1.1 of subrogation and indemnity;
 - 6.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Contractor's obligations; and
 - 6.1.3 to prove in the liquidation or insolvency of the Contractor,
- only if the Beneficiary so consents or requires and only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand.
- 6.2 The Guarantor hereby acknowledges that it has not taken any security from the Contractor and agrees not to do so until the Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this clause 6.2 on trust for the Beneficiary.

7 Representations and Warranties

7.1 The Guarantor hereby represents and warrants to the Beneficiary that:

- 7.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 7.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 7.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee, including entry into and performance of a contract pursuant to clause 3, have been duly authorised by all necessary corporate action and do not contravene or conflict with:
 - 7.1.3.1 the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - 7.1.3.2 any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - 7.1.3.3 the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;
- 7.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 7.1.5 this Deed of Guarantee is the legal, valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

8 Payments and Set-Off

- 8.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law. If any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 8.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) calculated from day to day at a rate per annum equal to 4% above the base rate of the Bank of England from time to time in force.

- 8.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

9 Guarantor's Acknowledgement

- 9.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

10 Assignment

- 10.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person to whom its rights and interests under the Guaranteed Agreement are being assigned or transferred without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Deed of Guarantee.

11 Expiry Date

- 11.1 Subject to Clause 11.2 below, but notwithstanding any other provision of this Deed of Guarantee, the Guarantor's liability and obligations hereunder shall terminate on the Expiry Date.
- 11.2 Notwithstanding the expiry of this Deed of Guarantee pursuant to Clause 11.1 above, the liability and obligations of the Guarantor under this Deed of Guarantee shall continue in full force and effect in relation to all Guaranteed Obligations which are the subject of a valid demand or notice under this Deed of Guarantee on or before the Expiry Date.

12 Severance

- 12.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

13 Third Party Rights

- 13.1 A person who is not a party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

14 Addendum or Variation

- 14.1 The Guarantor by this Deed of Guarantee authorises the Contractor and the Beneficiary to make any addendum or variation to the Guaranteed Agreement, the due and punctual performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this Deed of Guarantee.

15 Governing Law

- 15.1 This Deed of Guarantee, and any non-contractual claims or disputes arising herefrom, shall be governed by and construed in all respects in accordance with English law.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any claim or dispute which may arise out of or in connection with this Deed of Guarantee (including any non-contractual claims or disputes) and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 15.3 Nothing contained in this clause 15 shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this clause 15 on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 15.5 The Guarantor irrevocably agrees for the benefit of the Beneficiary that it shall be bound by all court judgements or arbitration awards relating to the Guaranteed Agreement and/or the Guaranteed Obligations.

16 Process Agent

- 16.1 [The Guarantor hereby irrevocably designates, appoints and empowers [the Contractor] [a suitable alternative to be agreed if the Contractor's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]] ******Delete if Guarantor is incorporated in England or Wales******

17 Counterparts

- 17.1 This Deed of Guarantee may be entered into in any number of counterparts and each of the executed counterparts, when duly executed and delivered, shall be deemed to be an original but, taken together, they shall constitute one and the same instrument.
- 17.2 Transmission of an executed counterpart of this Deed of Guarantee (but for the avoidance of doubt not just a signature page) by (a) fax or (b) email (in PDF or JPEG) shall take effect as delivery of an executed counterpart of this Deed of Guarantee. If this method of delivery is adopted, without prejudice to the validity of the Deed of Guarantee thus made, each party shall provide the other with the original of such counterpart as soon as reasonably possible afterwards.

IN WITNESS this instrument has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Guarantor

Executed as a deed by [] acting)
by two directors or a director and a secretary:)
)

.....

Director

.....

Director/Secretary

Beneficiary

The common seal of **THE SECRETARY**)
OF STATE FOR DEFENCE was affixed to))
this deed in the presence of:)

.....

Authorised signatory