



Ministry
of Justice

OFFICIAL SENSITIVE

CONTINGENCY RESPONSE PROGRAMME

FAC-1 CONTRACT

PERFORMANCE SECURITY SCHEDULE – PART 1: PARENT COMPANY GUARANTEE

PART 1

PARENT COMPANY GUARANTEE



DATED 20[25]

(1) [GUARANTOR]

and

(2) [BENEFICIARY]

DEED OF GUARANTEE

relating to

[INSERT NAME OF WORKS PACKAGE]



DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made on

20[25]

BETWEEN:

- (1) [INSERT NAME OF THE GUARANTOR] (a company incorporated in England and Wales with company number [INSERT COMPANY NUMBER]), whose registered office is at [INSERT REGISTERED ADDRESS] (the "Guarantor");¹ and
- (2) **THE SECRETARY OF STATE FOR JUSTICE OF THE MINISTRY OF JUSTICE** of 102 Petty France, Westminster, London, SW1H 9AJ (the "Beneficiary").

WHEREAS:

- (a) The Guarantor has agreed, in consideration of the Beneficiary entering into the Construction Contract with the Contractor, to guarantee all of the Contractor's obligations under the Construction Contract.
- (b) 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 Construction Contract, 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 Construction Contract;
- 1.1.2 the words and phrases below shall have the following meanings:

Contractor	means [INSERT NAME] (company number [INSERT COMPANY NUMBER]) whose registered office is at [INSERT ADDRESS] (with each such term include its successors in title);
Beneficiary	means the Party identified as such in this Deed of Guarantee (and such term shall include its successors in title and assigns);
Construction Contract	means a "Notice to Proceed to Phase 2" dated [INSERT DATE] between (1) the Beneficiary and (2) the Contractor in connection with the Works issued pursuant to and in accordance with an ACA Framework Alliance Contract (FAC-1) (as amended) between the Beneficiary, the Contractor and other parties dated [INSERT DATE];
Guaranteed Obligations	means all obligations and liabilities of the Contractor to the Beneficiary in connection with the design and construction of the Works under and in connection with the Construction Contract, together with all obligations owed by the Contractor to the Beneficiary that are supplemental to, incurred under,

¹ **DRAFTING NOTE:** This entry will need to be updated if the Guarantor is not incorporated in the UK (and appropriate service agent provisions will also need to be inserted).



ancillary to or calculated by reference to the Construction Contract;

Party means a party to this Deed of Guarantee (and "**Parties**" shall be construed accordingly);

Working Day has the meaning given to such term in the Construction Contract; and

Works means the main works package known as **INSERT DESCRIPTION** as more particularly identified and described as "*the works*" in the Construction Contract..

1.2 Without prejudice to the generality of clause 1.1, in this Deed of Guarantee:

- 1.2.1 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Construction Contract) 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, restated, supplemented, substituted or novated from time to time;
- 1.2.2 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.2.3 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.2.4 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;
- 1.2.5 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.2.6 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;
- 1.2.7 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;
- 1.2.8 references to clauses and Schedules are, unless otherwise provided, references to clauses of and Schedules to this Deed of Guarantee; and
- 1.2.9 references to liability are to include any liability whether actual, contingent, present or future.

2. **GUARANTEE AND INDEMNITY**

- 2.1 Subject always to clause 2.5, 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 Subject always to clause 2.5, the Guarantor irrevocably and unconditionally undertakes to, within five (5) days of its receipt of a written demand from the Beneficiary, 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 under or in connection with the Construction Contract or in respect of the Guaranteed Obligations as if it were a primary obligor.

- 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 to within five (5) days of a written demand from the Beneficiary to do so (and at the cost and expense of the Guarantor):
- 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Construction Contract had been entered into directly by the Guarantor and the Beneficiary; and
- 2.3.2 as a separate and independent obligation and liability (and subject always to clause 2.5), indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all properly and reasonably incurred legal fees) 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 Construction Contract.
- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under clause 2.1 and clause 2.3 above (and subject always to clause 2.5), the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including value added tax thereon, and including, without limitation, all reasonably and properly incurred legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal.
- 2.5 Notwithstanding any other provision of this Deed of Guarantee, the Guarantor
- 2.5.1 shall:
- (a) have no greater liability to the Beneficiary in duration and/or value under this Deed of Guarantee than it would have in respect of the Guaranteed Obligations; and
- (b) be entitled in any action or proceedings by the Beneficiary in connection with this Deed of Guarantee to rely on any term of the Construction Contract and raise equivalent rights in defence of liability in respect of the same (excluding any rights of set-off, abatement and/or counterclaim) that it would have,
- had the Guarantor been named jointly with the Contractor as the "Contractor" in the Construction Contract; and
- 2.5.2 shall be released and discharged from its obligations under the Deed of Guarantee when the Contractor's obligations and liabilities cease under the Construction Contract.



3. NOT USED

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:	[INSERT ADDRESS]
For the attention of:	[INSERT NAME]

or such other address in England and Wales or 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 for the receipt of such demands or notices, provided that where any such demand or notice is issued by post, it be issued by recorded / special delivery post.

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

4.2.1 if delivered by hand, when left at the proper address for service or if the time of such delivery is either after 17:00 on a Working Day or on a day other than a Working Day, at 10:00 on the next Working Day; and

4.2.2 if delivered by recorded / special delivery post, upon the second (2nd) Working Day after posting.

- 4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded / special delivery letter, as the case may be.

- 4.4 Any notice purported to be served on the relevant Party under this Deed of Guarantee shall only be valid when received in writing by the other Party.

5. BENEFICIARY'S PROTECTIONS

- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Contractor and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Construction Contract and/or the engagement of the Contractor under the Construction Contract or by any 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 by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Contractor 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;

5.2.2 it 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, any legal limitation or other incapacity, of the Contractor, the Beneficiary, the Guarantor or any other person;



5.2.3 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 (subject to clause 2.5) 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; and

5.2.4 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.

5.3 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 Guaranteed Obligation.

5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Contractor or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Contractor 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.

5.5 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.

5.6 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.

5.7 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 and 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. **GUARANTOR INTENT**

Without prejudice to the generality of clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Construction Contract and any associated fees, costs and/or expenses.

7. **RIGHTS OF SUBROGATION**

7.1 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:

7.1.1 of subrogation and indemnity;



- 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Contractor's obligations; and/or
 - 7.1.3 to prove in the liquidation or insolvency of the Contractor 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.
- 7.2 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 monies payable hereunder and will hold any security taken in breach of this clause 7 on trust for the Beneficiary.

8. DEFERRAL OF RIGHTS

- 8.1 Until all amounts which may be or become payable by the Contractor under or in connection with the Construction Contract have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
- 8.1.1 exercise any rights it may have to be indemnified by the Contractor;
 - 8.1.2 claim any contribution from any other guarantor of the Contractor's obligations under the Construction Contract;
 - 8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Construction Contract or of any other guarantee or security taken pursuant to, or in connection with, the Construction Contract;
 - 8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Contractor; and/or
 - 8.1.5 claim any set-off or counterclaim against the Contractor.
- 8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9. REPRESENTATIONS AND WARRANTIES

- 9.1 The Guarantor hereby represents and warrants to the Beneficiary that:
- 9.1.1 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;
 - 9.1.2 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;
 - 9.1.3 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 have been duly authorised by all necessary corporate action and do not contravene or conflict with:
 - (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;



- (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject;
- (c) 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;
- (d) 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
- (e) 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.

10. PAYMENTS AND SET-OFF

- 10.1 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, and 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.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all reasonably and properly incurred legal and other costs (including value added tax) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11. NOT USED

12. ASSIGNMENT

- 12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person to whom the Beneficiary lawfully assigns or charges the benefit of the Construction Contract without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee. Save for the aforesaid, the Beneficiary may not assign or charge the benefit of this Deed of Guarantee to any other person without the Guarantor's prior written consent, not to be unreasonably withheld or delayed.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed.

13. SEVERANCE

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.



14. **THIRD PARTY RIGHTS**

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, provided always that this clause 14 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.

15. **GOVERNING LAW**

15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with the laws of England and Wales.

15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have exclusive jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the exclusive jurisdiction of such courts.

15.3 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.

IN WITNESS whereof the Parties have caused this Deed of Guarantee to be executed and delivered as a **DEED** on the day and year first before written.

[EXECUTION BLOCKS TO BE INSERTED]