

SCHEDULE 11

PARENT COMPANY GUARANTEE

**relating to the provision of Facilities Management
Services in connection with DEFRA's Workplace
and Facilities Management Project**

**SECRETARY OF STATE FOR THE
ENVIRONMENT, FOOD AND RURAL AFFAIRS**

(1)

("Client")

and

(2)

██████████

("Guarantor")

THIS DEED is made on

BETWEEN

(1) The Secretary of State for Environment, Food and Rural Affairs of Nobel House, 17 Smith Square, London SW1P 3JR acting through the Department for Environment Food and Rural Affairs (**DEFRA**) and its executive agencies ("**Client**"); and

(2) [REDACTED]
[REDACTED]

BACKGROUND

- (A) The Client has or is about to enter into a contract, reference C17577 (CCS Framework RM6232) ("**Contract**") with ISS Mediclean Ltd, company number 01659837, of Velocity 1, Brooklands Drive, Weybridge, Surrey, KT13 0SL ("**Service Provider**") for the provision of Facilities Management Services in connection with DEFRA's Workplace and Facilities Management Project ("**the Service**").
- (B) Pursuant to the Contract, the *Service Provider* is required to procure a parent company guarantee in the form of this Deed to be provided by the Guarantor to the Client.
- (C) Pursuant to this Deed, the Guarantor has agreed to guarantee the *Service Provider's* due performance of its duties and obligations under the Contract.

AGREED TERMS

1 DEFINITIONS

1.1 In this Deed the following words shall have the following meanings:

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for business in London.

"**Deed**" means this parent company guarantee.

"**Funder**" means a person that has provided, or is to provide, finance in connection with:

- (a) the whole or any part of the Project or the completed Project; or
- (b) the site of the Project,

whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

"Insolvent": a Party is insolvent if:

- (a) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that Party with one or more other companies or a solvent reconstruction; or
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with its winding up other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction; or
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over it; or
- (e) a floating charge holder over its assets has become entitled to appoint or has appointed, an administrative receiver; or
- (f) a person becomes entitled to appoint a receiver over its assets or a receiver is appointed over its assets; or
- (g) a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within ten (10) Business Days; or
- (h) any event occurs, or proceeding is taken, in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (h) above (inclusive); or
- (i) it suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (j) it applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986.

"Party" means a party to this Deed.

"Project" means the provision of Facilities Management Services in connection with DEFRA's Workplace and Facilities Management Project.

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and shall include successors, transferees and permitted assigns.
- 1.4 Unless the context otherwise requires:
- (a) words in the singular shall include the plural and in the plural include the singular; and
 - (b) references to one gender shall include references to the other genders.
- 1.5 A reference to a statute or statutory provision:
- (a) is a reference to it as amended, extended or re-enacted from time to time; and
 - (b) shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 Any obligation on a Party not to do something includes an obligation not to agree that thing to be done.
- 1.7 A reference to this Deed or to any other document referred to in this Deed is a reference to this Deed or such other document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.8 References to Clauses are to the clauses of this Deed.
- 1.9 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 GUARANTEE AND INDEMNITY

- 2.1 The Guarantor irrevocably and unconditionally:

- (a) guarantees to the Client, as a continuing guarantee, the due, proper and punctual performance by the *Service Provider* of all of the terms, conditions, obligations, warranties, undertakings and agreements contained in the Contract (including, without limitation, the payment of all monies, liabilities and obligations at any time due or owing by the *Service Provider* to the Client under or in connection with the Contract (the "**Guaranteed Obligations**")); and
 - (b) undertakes with the Client that, whenever the *Service Provider* fails to perform or pay any of the Guaranteed Obligations, the Guarantor will immediately, fully and properly perform (or cause to be fully and properly performed) each Guaranteed Obligation in respect of which the *Service Provider* has defaulted, make good (or cause to be made good) any breach by the *Service Provider* of a Guaranteed Obligation and pay any amount due from the *Service Provider* as if it were the principal obligor under the Contract.
- 2.2 If the *Service Provider* fails to observe or perform any of its duties or obligations to the Client under the Contract, or if the *Service Provider* fails to pay any sum, loss, debt, damage, interest, cost or expense (including any monetary award of an adjudicator, arbitrator or court) due from the *Service Provider* to the Client 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 Client against all loss, debt, damage, interest, cost and expense incurred by the Client by reason of such failure or non-payment and shall, on first written demand, pay to the Client, without any deduction or set-off, the amount of that loss, debt, damage, interest, cost and expense.
- 2.3 If the *Service Provider* becomes Insolvent or if the Client terminates the *Service Provider's* employment under the Contract under clause 91.1 of the Contract, the Guarantor shall indemnify the Client against all loss, debt, damage, interest, cost and expense incurred by the Client by reason of the *Service Provider* becoming Insolvent or such termination and shall, on first written demand, pay to the Client without any deduction or set-off the amount of that loss, debt, damage, interest, cost and expense.

3 AMENDMENTS TO THE CONTRACT

- 3.1 The Contract may be modified, amended or supplemented in any way without the Guarantor's consent. The Guarantor's liability under this Deed (which includes the *Service Provider's* duties, obligations and liabilities under the Contract as modified, amended or supplemented) shall not be affected by:
- (a) any such modification, amendment or supplement; or

- (b) any invalidity, avoidance or termination of the Contract; or
- (c) any waiver, concession, allowance of time, compromise or forbearance given to, or made with, the *Service Provider*. The terms of this Deed shall apply to the terms of any such compromise as they apply to the Contract.

4 CLIENT DOES NOT HAVE TO PURSUE SERVICE PROVIDER

The Client does not have to pursue any remedy against the *Service Provider* before proceeding against the Guarantor under this Deed.

5 INSOLVENCY OF SERVICE PROVIDER

Without affecting Clause 2.3, if the *Service Provider* suffers Insolvency that shall not affect or reduce the Guarantor's liability under this Deed.

6 PRIORITY OF CLAIMS AGAINST THE SERVICE PROVIDER

As long as any liability incurred by the *Service Provider* to the Client guaranteed under this Deed remains unsatisfied, the Guarantor shall not, in respect of any payment made or liability arising under this Deed, effect (or try to effect) any recovery from the *Service Provider*, whether by receipt of money, set-off, proof of debt, enforcement of security or otherwise.

7 LIMIT OF LIABILITY

- 7.1 The Client may not recover any more under this Deed in respect of any matter than the Client would be entitled to recover from the *Service Provider* in respect of that matter, net of any set off. The Client may not start proceedings against the Guarantor under this Deed in respect of any claim if any proceedings against the *Service Provider* in respect of that claim would be statute-barred.
- 7.2 The Guarantor's total liability to the Client for all claims made by the Client in respect of matters arising under or in connection with this Deed, other than the excluded matters set out in clause X18 of the Contract, is limited to £160,000,000 (one hundred and sixty million pounds) and applies in contract, tort or delict and otherwise to the extent allowed under the law of this Deed.

8 NOTICES

- 8.1 Each notice to be given under this Deed shall be given in writing in English. Notice shall not be validly given by e-mail.

8.2 Any notice to be given by one Party to another under this Deed shall (unless one Party has specified another address to the other Party, such address to take effect on 5 Business Days after receipt or deemed receipt of the notice specifying the other address) be given to that other Party at the address set out below:

(a) Client:

Address: Department for Food Environment and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR

Attention: Defra Commercial Manager

(b) Guarantor:

[REDACTED]

[REDACTED]

[REDACTED]

8.3 Any notice given by any Party shall be deemed to have been received:

- (a) if given by hand, at the time of day of actual delivery;
- (b) if posted, by 10am on the second Business Day following the Business Day on which it was despatched by first class recorded or special delivery mail postage prepaid; or
- (c) if sent by courier on the date and at the time that the courier's delivery receipt is signed.

provided that a notice given in accordance with the above but received on a day which is not a Business Day or after 5:30pm London time on a Business Day in the place of receipt shall be deemed to have been received on the next Business Day.

9 ASSIGNMENT

9.1 The Guarantor may not assign or transfer any rights under this Deed without the prior written consent of the Client.

9.2 The Client may assign the benefit of this Deed:

- (a) on two occasions to any person; and
- (b) without counting as an assignment under Clause 9.2(a):

- (i) by way of security to a Funder (including any reassignment on redemption of security);
- (ii) to and from a subsidiary or other associated companies within the same group of companies as the Client so long as that assignee company remains within the same group of companies as the Client;
- (iii) to any person to whom it assigns or transfers its rights under the Contract; or
- (iv) to any person who purchases the Client's interest in the Service.

10 EXPIRY

- 10.1 This Deed shall expire 18 months following the end of the Service Period (as defined in the Contract) ("**Expiry**").
- 10.2 On Expiry, this Deed shall become null and void except in respect of any claim which is notified to the Guarantor prior to Expiry.

11 RIGHTS OF THIRD PARTIES

A person who is not a Party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

12 LAW AND JURISDICTION

- 12.1 This Deed, 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 English law.
- 12.2 Any claim, dispute or difference arising under or in connection with this Deed shall be subject to the exclusive jurisdiction of the English courts to which each of the Parties irrevocably agrees to submit.
- 12.3 This Deed has been executed as a deed and is delivered on the date stated at the beginning of it.

EXECUTED as a **DEED** on behalf of
DEFRA:

Signature:

Name (in block capitals):

For and on behalf of

**THE SECRETARY OF STATE FOR THE
ENVIRONMENT, FOOD AND RURAL
AFFAIRS,**

in the presence of a witness:

WITNESS

Signature:

Name (in block capitals):

Address (in block capitals):

Occupation (in block capitals):

EXECUTED as a **DEED** by [REDACTED]
acting by a director, in the presence of a
witness:

DIRECTOR

Signature:

Name (in block capitals):

WITNESS

Signature:

Name (in block capitals):

Address (in block capitals):

Occupation (in block capitals):