Schedule R

PARENT COMPANY GUARANTEE

**………………………….. 20[**●**]**

**THE SECRETARY OF STATE FOR DEFENCE**

and

**[**●**]**

|  |
| --- |
| **DEED OF GUARANTEE** |

**THIS DEED OF GUARANTEE** is made on 20[●]

**BETWEEN**

1. **THE SECRETARY OF STATE FOR DEFENCE** (the **"Authority"**); and
2. The person specified in Schedule 1 to this Guarantee (the "**Guarantor**").

**WHEREAS:**

1. Defence Equipment and Support (**"DE&S"**) is the part of the Ministry of Defence that procures defence equipment, its support and logistics and manages that equipment and support throughout its life on behalf of the Secretary of State for Defence.
2. As part of the Project Delivery Partner solution, the Authority has run a competition to appoint a supplier (**"Supplier"**) to assist in the delivery of Project Delivery (PD) and Operational Delivery (OD) functional support services.
3. The Supplier has been chosen under the competition to perform services on the terms and conditions set out in the Contract.
4. The Guarantor has agreed to guarantee the performance by the Supplier of its obligations under the Contract on the terms and conditions set out in this Guarantee.

**THIS DEED WITNESSES** as follows:

1. Definitions and interpretation
	1. Definitions

Terms defined in the Contract shall, unless otherwise defined in this Guarantee or unless a contrary intention appears, bear the same meanings when used in this Guarantee.

Unless a contrary intention appears the following terms shall have the following meaning:

**"DE&S Project Delivery Function"** means the DE&S Project Delivery and Operational Delivery functions, as described in the Contract.

**"Contract"** means the contract between the Authority and the Supplier dated [*insert date*] in relation to the appointment of the Supplier as its Project Delivery Partner Supplier;

**"Guarantee"** means this Deed of Guarantee;

**"Guaranteed Obligations"** has the meaning given to it in Clause 2.1.1; and

**"Ratings Agency"** means each of Fitch Ratings Limited, Moody's Investors Service Inc, Moody's Investors Service Limited and Standard & Poor's Rating Services, a division of the McGraw-Hill Companies Inc.

* 1. Interpretation

Unless a contrary intention appears, any reference in this Guarantee to:

a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision;

a reference to an enactment, statutory provision or subordinate legislation shall include a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced, and references to an enactment or statutory provision include a reference to any repealed statute or statutory provision which it re-enacts (with or without modification);

words in the singular shall include the plural and vice versa;

references to one gender include other genders;

a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership or to an individual's executors or administrators;

a reference to a Clause or Schedule (other than to a schedule to a statutory provision), shall be a reference to a Clause or Schedule of or to this Guarantee;

references in this Guarantee to any contract, agreement or other instrument (other than an enactment, statutory provision or subordinate legislation made thereunder) shall be deemed to be references to that contract, agreement or instrument as from time to time amended, varied, supplemented, substituted, novated or assigned;

if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;

references to writing shall include any modes of reproducing words in any legible form and shall include email except where expressly stated otherwise;

a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";

references to the Authority or the Guarantor shall include any assignees or successors in title to those persons;

the headings in this Guarantee are for convenience only and shall not affect its interpretation; and

the words "other", "or otherwise" and "whatsoever" shall not be construed ejusdem generis or be construed as any limitation upon the generality of any preceding words or matters specifically referred to.

* 1. Deed

The parties to this Guarantee intend it to take effect as a deed.

1. Guarantee and indemnity
	1. Guarantee

The Guarantor unconditionally and irrevocably:

guarantees to the Authority the proper, complete and punctual discharge by the Supplier of each and all of its duties, undertakings, obligations and responsibilities of whatever nature under, or in connection with, the Contract (including liabilities of the Supplier to pay damages, agreed or otherwise, under the Contract) (the **"Guaranteed Obligations"**);

undertakes to the Authority to procure the full performance and observance of the Guaranteed Obligations within five (5) Business Days of written demand in accordance with the terms of this Guarantee if the Supplier fails in any respect to perform or observe the same; and

undertakes to the Authority to pay or discharge on demand all sums, liabilities, losses, damages, costs, compensation, fines, other liabilities (including tax), charges and expenses (together with interest on such sum accrued both before and after the date of demand until the date of payment) which the Supplier is liable to pay under the Contract, as if it was the principal obligor.

* 1. Indemnity

The Guarantor, as principal obligor and as a separate, independent, primary and additional obligation to its obligations and liabilities under Clause 2.1 (*Guarantee*), agrees to:

indemnify the Authority on an after tax basis against all losses, damages, interest, debt, claims, demands, liabilities costs and expenses (including legal expenses) suffered or incurred by the Authority in connection with the failure by the Supplier to perform any or all of the Guaranteed Obligations when they are due and performable; and

undertakes to pay to the Authority immediately within five (5) Business Days of the Authority's first written demand the amount of that loss, damage, interest, debt, claim, demand, liability cost and expense without set-off or counterclaim and free and clear of and without deduction, for or on account of, any present or future taxes, charges, duties, deductions or withholdings of any nature whatsoever.

* 1. Principal Obligor

Without prejudice to the rights of the Authority against the Supplier, the Guarantor shall be deemed a principal obligor in respect of its obligations under this Guarantee and not a surety.

* 1. Demands

The Authority may make any number of demands under this Clause 2 (*Guarantee and Indemnity*).

The Guarantor agrees that after a demand has been made by the Authority under this Guarantee and until the amount demanded has been paid in full or performance of the relevant Guaranteed Obligation taken place, the Authority may take such action as it thinks fit against the Supplier to procure performance of the Guaranteed Obligations or recover all sums due and payable to it under this Guarantee, without affecting the obligations of the Guarantor under this Clause 2 (*Guarantee and Indemnity*).

1. Liability of guarantor

Without prejudice to Clause 12 (*Enforcement Costs and Expenses*) the Guarantor's liability hereunder shall be no greater than the liability of the Supplier to the Authority under the Contract.

1. Waiver of defences

The obligations of the Guarantor under this Guarantee shall not be reduced, discharged impaired or otherwise affected by (and the intention of the Guarantor is that its obligations shall continue in full force and effect notwithstanding) any act, omission, matter or thing which, but for this Clause 4 (*Waiver of Defences*), would reduce, release or prejudice any of its obligations under this Guarantee (whether or not known to it or the Authority) including:

any termination, amendment, variation, extension, restatement (however fundamental) to the Contract or any variation in the obligations undertaken under or pursuant to the Contract (including the nature, extent, timing and method of performance of the Contract) or novation of the Contract (in whole or in part);

the granting by the Authority of any time, indulgence, waiver or consent granted to, or any concession or arrangement made with, the Supplier or any other person (whether expressly or by conduct);

any legal limitation, incapacity or lack of power, authority or legal personality of or any dissolution, merger, amalgamation, reconstitution, reorganisation or change in the members, name, status or constitution of the Guarantor, the Supplier, the Authority or any other person;

the granting of any other bond, security or guarantee now or hereafter held by the Authority for all or any part of the Guaranteed Obligations;

the enforcement, delay or failure in enforcement release or waiver of any such bond, security or guarantee referred to in Clause 4.1.4 or any amendment, omission or extension to or variation thereto;

any claim or enforcement of payment from the Supplier or any other person;

any delay or forbearance by the Authority in exercising its rights or remedies under this Guarantee or the enforcement or absence of enforcement of this Guarantee;

the illegality, invalidity, unenforceability or frustration of any Guaranteed Obligation for any reason, or any defect in any provision of the Contract or any other security given in relation to the Guaranteed Obligations;

any present or future law or regulations purporting to reduce or prejudice any of the Guaranteed Obligations;

anything that the Authority may do, or omit or neglect to do which, but for this provision, might exonerate, discharge or extinguish the liability of the Guarantor under this Guarantee; and

the insolvency, liquidation, winding-up or administration of (or the appointment of an administrator or receiver of) or similar proceedings or compromise or arrangement with creditors of the Supplier or any other person, or the amalgamation, reconstruction, change in status, function, control or ownership of the Supplier.

1. Continuing Guarantee

Subject to Clause 3 (*Liability of Guarantor*) this Guarantee is a continuing guarantee and shall remain in full force and effect until the Guaranteed Obligations have been discharged and performed in full.

1. Deferral of Guarantor's rights

Without prejudice to Clause 6.3, until all of the Guaranteed Obligations have been unconditionally and irrevocably discharged, and unless the Authority otherwise directs, the Guarantor agrees that it shall not exercise any rights which it may have by reason of performance by it of its obligations under this Guarantee:

to be indemnified by the Supplier or to make or enforce any claim or rights against the Supplier, including to demand or accept repayment in whole or in part of any indebtedness now or hereafter due to the Guarantor from the Supplier, or any other person liable;

to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Authority against the Supplier under the Contract, or of any other guarantee or security taken pursuant to, or in connection with, the Contract by the Authority;

to prove or claim in competition with the Authority in the insolvency or administration of the Supplier or otherwise have or exercise any rights or subrogation or a surety in competition with the Authority; or

to call on the Authority to sue or take proceedings against the Supplier or raise a defence, claim set-off or raise a counter-claim against the Supplier.

The Guarantor shall hold on trust for the Authority:

any monies or other assets received or recovered by the Guarantor; and

any security taken from the Supplier or any other person, as security for the Guarantor's liability under this Guarantee,

and upon request by the Authority, the Guarantor shall immediately deposit such security with the Authority (or as it may direct) or pay or transfer such monies or assets to the Authority for application in or towards the discharge of the Guaranteed Obligations.

Subject to Clause 6.4, the Guarantor undertakes not to seek to recover its costs, expenses, liabilities or losses from the Supplier however arising, including in relation to any liability arising in tort (including the tort of negligence) or arising as a result of a breach of statutory duty.

Nothing in Clause 6.3 shall purport to limit or exclude the liability of the Supplier for death or personal injury caused by its negligence or otherwise or for fraud, to the extent that the same is not permissible at law.

1. Reinstatement

If any payment by the Supplier or Guarantor or any discharge given by the Authority (whether in respect of the Guaranteed Obligations or the obligations of the Guarantor to make payment in respect of the Guaranteed Obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

the liability of the Supplier and the Guarantor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and

the Authority shall be entitled to recover the value of the amount of that payment from the Contactor or the Guarantor, as if the payment, discharge, avoidance or reduction had not occurred.

1. Financial Standing

Where a material deterioration in the financial position of the Guarantor occurs (including any downgrade in its credit rating by a Ratings Agency) the Guarantor shall promptly, and in any event no later than two (2) Business Days after the occurrence of such deterioration, notify the Authority in writing of the occurrence of such deterioration together with an explanation, in reasonable detail, of the nature and reasons for the deterioration in its financial position.

1. Enforcement

The Guarantor waives any right it may have of first requiring the Authority to proceed against or enforce any other rights or remedies, or claim payment from the Supplier or any other person before exercising any right under this Guarantee.

1. Additional Security

This Guarantee is in addition to and is not in any way prejudiced by any rights the Authority may have under any other agreement, guarantee, or security now or subsequently held by the Authority. The Authority's rights under this Guarantee are in addition to and not exclusive of those provided by law, in the Contract or in any other document, instrument, or agreement executed in connection with the Contract.

1. Retention of this Guarantee

The Authority shall be entitled to retain the original of this Guarantee after as well as before the payment or discharge of all of the Guaranteed Obligations for such period as the Authority may determine.

1. Enforcement costs and expenses

Without prejudice to Clause 2 (Guarantee and Indemnity), the Guarantor irrevocably and unconditionally agrees to indemnify (on an after tax basis) the Authority against all losses, claims, charges, costs and expenses which it may incur as a result of any default or breach by the Guarantor in performing its obligations under this Guarantee or in connection with the enforcement or attempted enforcement of, or preservation of the Authority's rights under, this Guarantee.

1. Representations and warranties

The Guarantor represents and warrants in favour of the Authority that:

it is duly formed and validly existing under the laws of its jurisdiction of formation;

it has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of, this Guarantee;

this Guarantee constitutes, subject to any general principles of law limiting its obligations, its legal, binding, valid and enforceable obligations;

the entry into and performance by it of, and the transactions contemplated by, this Guarantee does not and will not conflict with:

any law or regulation or judicial or official order applicable to it;

its constitutional documents; or

any agreement or instrument which is binding upon it or any of its assets or result in the creation of (or a requirement for the creation of) any security or encumbrance of any kind over its assets;

to the best of its knowledge and belief, no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency have been started or threatened against any Guarantor which may have the effect of preventing the Guarantor from meeting its obligations under this Guarantee;

the execution by it of this Guarantee constitutes, and the exercise by it of its rights and performance of its obligations under this Guarantee shall constitute, private and commercial acts performed for private and commercial purposes and it shall not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to this Guarantee; and

without prejudice to the generality of Clause 13.1.3, its:

irrevocable submission under this Guarantee to the jurisdiction of the courts of England;

agreement that this Guarantee is governed by English law; and

agreement not to claim any immunity to which it or its assets may be entitled,

are legal, valid and binding under the laws of its jurisdiction of incorporation and any judgment obtained in England shall be recognised and be enforceable by the courts of its jurisdiction of incorporation.

***[Tenderer Note: A legal opinion may also be required in relation to the issues in Clauses 13.1.1, 13.1.2, 13.1.3, 13.1.4, 13.1.6 and 13.1.7.]***

1. Interest

The Guarantor hereby agrees to pay to the Authority, in respect of any amount demanded from it in accordance with this Guarantee interest on such amount demanded by the Authority from the Supplier at the rate of interest payable or deemed to be payable by the Supplier in respect of the amount demanded as calculated and compounded in accordance with the Contract. Such interest shall accrue due on a daily basis from the demand by the Authority until actual payment by the Guarantor (both before and after any further demand or judgment or the liquidation of any Guarantor or the Supplier).

1. WITHHOLDINGS and deductions

All payments to be made by the Guarantor under this Guarantee shall be made without any set- off, counterclaim or equity and (subject to the following sentence) free from, clear of and without deduction for any taxes, duties, levies, imposts or charges whatsoever, present or future. If the Guarantor is compelled by the law of any applicable jurisdiction (or by an order of any regulatory authority in such jurisdiction) to withhold or deduct any sums in respect of taxes, duties, levies, imposts or charges from any amount payable to the Authority under this Guarantee or, if any such withholding or deduction is made in respect of any recovery under this Guarantee, the Guarantor shall pay such additional amount so as to ensure that the net amount received by the Authority shall equal the full amount due to it under the provisions of this Guarantee (had no such withholding or deduction been made).

1. Assignment and novation
	1. Assignment by Guarantor

The Guarantor shall not assign any of its rights or transfer or novate any of its rights or obligations under this Guarantee to any person unless the Authority has given its prior written consent.

* 1. Assignment by the Authority

The Authority may at any time assign, transfer or novate without the consent of the Guarantor all or part of its rights and obligations under this Guarantee (whether or not accrued) to any person to whom the benefit of the Contract is assigned, transferred or novated in accordance with its terms and this Guarantee will survive and continue in full force and effect as against the Guarantor following the assignment, transfer or novation of the Authority's rights and obligations under this Guarantee. The Guarantor shall at its own cost execute such documents and do such other things as the Authority may reasonably require in order to facilitate and give effect to such assignment, transfer or novation.

1. Severance

If any provision or part of this Guarantee is or becomes illegal, invalid, void or unenforceable due to any Applicable Law, it shall be deemed to be deleted and the remaining provisions of this Guarantee shall continue in full force and effect.

1. Waiver

The rights and remedies of the parties to this Guarantee shall not be affected by any failure to exercise or delay or forbearance in exercising any right or remedy or by the giving of any indulgence by one party to this Guarantee or anything else whatsoever, except a specific waiver or release in writing and any such waiver shall not prejudice or affect any other rights or remedies of the parties to this Guarantee under this Guarantee. No single or partial exercise of any right or remedy shall prevent any further or other exercise, or the exercise of any other right or remedy.

1. Confidentiality

The terms of clauses 71 (*Confidentiality*), 74 (*Disclosure*), 75 (*Supplier Right to Request Confidentiality*), 7(*Transparency*) and 76 (*Freedom of Information Act*) of the Contract shall apply to this Guarantee as if references to the "Contract" were references to the "Guarantee" and references to the "Supplier" were references to the "Guarantor".

1. Notices
	1. Communications and Notices

Any communication or notice to be made under or in connection with this Guarantee (including any demand to the Guarantor made by the Authority) shall be made in writing and, unless otherwise stated, may be delivered personally (which includes delivery by courier), or sent by pre-paid recorded or special delivery post to the party concerned at its address set out in Schedule 2 *(Notices*) to this Guarantee or to such other address as may be notified by such party for the purposes of this Clause.

* 1. Delivery

Any communication or notice given pursuant to this Guarantee shall be deemed to have been served as follows:

if delivered personally, at the time of delivery; or

if sent by recorded or special delivery post, on the third (3rd) Business Day after posting, or if posted from a place outside the UK, the fifth (5th) Business Day after posting.

A notice received or deemed to be received on a day which is not a Business Day or after 5pm on any Business Day in the place of receipt, shall be deemed to have been received on the next following Business Day in the place of receipt.

1. Further assurance

The Guarantor shall promptly at its own expense and upon the request of the Authority:

execute or procure the execution of any document, or

perform or procure the performance of any act or thing;

which is necessary to discharge its obligations under this Guarantee.

1. Currency and exchange rate

All payments under this Guarantee shall be made in pounds sterling. All risk associated with movements in foreign currency exchange rates shall be borne by the Guarantor.

1. Contracts (Rights of Third Parties) Act 1999

No provision of this Guarantee is enforceable under the Contract (Rights of Third Parties) Act 1999 by a person who is not a party to this Guarantee.

1. Language

This Guarantee is executed in English and all communications under this Guarantee shall be made in English.

1. Counterparts

This Guarantee may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Guarantee.

1. Governing law and jurisdiction
	1. Governing law

This Guarantee (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

* 1. Dispute Resolution Procedure

The dispute resolution procedure set out Schedule E (*Dispute Resolution Procedures*) of the Contract (the **"DRP"**) shall apply to any dispute or difference between the parties to this Guarantee arising in connection with this Guarantee as if set out in full herein, with such amendments as are reasonably necessary to give full force and effect to the DRP, including construing references in the DRP to:

the "Contract" as references to the "Guarantee";

the "Supplier" as references to the "Guarantor"; and

the "Parent Company Guarantee" as references to "the Contract".

* 1. [Service of Process

Without prejudice to any other mode of service allowed under any relevant law, the Guarantor:

irrevocably appoints [x] as its agent for service of process in relation to any proceedings before the English courts in connection with any Dispute; and

agrees that failure by a process agent to notify the Guarantor of the process shall not invalidate the proceedings concerned.]

**IN WITNESS** whereof this Guarantee has been executed and delivered as a deed on the date first above written.

***[Tenderer Note: Execution blocks to be confirmed for each party. Legal opinions may also be required for the Guarantor.]***

**EXECUTED AS A DEED by**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

for and on behalf of

**THE SECRETARY OF STATE FOR DEFENCE**

The CORPORATE SEAL of the

SECRETARY OF STATE FOR DEFENCE

hereunto affixed is hereby authenticated by:

………………………………………….

Name

**EXECUTED AS A DEED** by )

**[*Name of Guarantor*]** )

acting by ***[Names of two of*** )

***its directors/a director and*** )

***its secretary]*** )

………………………………………….
Director

………………………………………….
[Director/Secretary]

**Schedule 1**

**The Guarantor**

| **Name** | **Registered Office** | **Registered Number** |
| --- | --- | --- |
|  |  |  |
|  |  |  |

**Schedule 2**

**Notices**

For the purposes of Clause 20.1 (*Communications and Notices*) a communication or notice shall be sent as follows:

**If to the Authority:**

Address:

**If to the Guarantor:**

Address: