**SS17064**

**Important Notice**

Road Asset Renewal Contract

**Schedule 2**

**Forms for Completion**

Growth, Environment and Transport

This document has been prepared by The Kent County Council (“the Employer”) to present the Employer’s requirements and provides details to tenderers for this stage of the tender process.

This document shall be read in conjunction with:

Schedule 1 Invitation to Tender.

Schedule 2 Forms for Completion (this document).

Schedule 3 Conditions of Contract.

Schedule 4 Quality Questions.

Schedule 5 Financial.

Schedule 6 Service Information.

If a bidder considers that any of the information submitted in its tender should not be disclosed by the Employer under a Freedom of Information Act 2000 request, it will have to set this out in the Freedom of Information Form provided by the Employer in Schedule 2 (Forms for Completion). The bidder will accept any decision made by the Employer as set out in the Freedom of Information Form.

You are advised to read all sections carefully before tendering. Should you have any difficulties with the tender, documentation or process please contact Strategic Sourcing & Procurement via the ‘Messages’ facility on the Kent Business Portal as identified in Section 3: Instructions of the Invitation to Tender.

This documentation is non-transferable.

# Form of Tender

|  |  |
| --- | --- |
| TO: Kent County Council | |
| DATE: [DATE] | |
| PROVISION OF: Road Asset Renewal Contract | |
| REFERENCE NUMBER: SS17064 | |
| We [INSERT NAME(S)] the undersigned, having examined the ITT and all other schedules, do hereby offer to provide Road Asset Renewal Contract as specified in those documents and in accordance with the attached documentation to the Council and continuing for the period specified in the Contract.  If this offer is accepted, we will execute such documents in the form of the Contract within ten days of being called on to do so.  We agree that before executing the Contract (and associated schedules) substantially in the form set out in the ITT, the formal acceptance of this Tender in writing by the Council or such parts as may be specified, together with the contract documents attached hereto shall comprise a binding contract between the Council and the [manager **OR** company].  We further undertake and it shall be a condition of any Contract, that we have not canvassed and will not, before the evaluation process, canvass or solicit any member or officer, employee or agent of the Council or other contracting Council in connection with the award of the Contract and that no person employed by us has done or will do any such act.  We agree that the Council may disclose the Tender information/documentation (submitted to the Council during this Procurement) more widely with other Public Sector Contracting Authorities for the purpose of ensuring effective public sector procurement processes, including the bench-marking of costs against other organisations to ensure value for money is being obtained.  I warrant that I have all requisite authority to sign this Tender and confirm that I have complied with all the requirements of the ITT. | |
| Signature | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name and Status | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Signature | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name and Status | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| For and on behalf of | [NAME OF COMPANY, PARTNERS OR CONSORTIUM] |

# Confidentiality Agreement

**THIS AGREEMENT** is made on the day of 20

## BETWEEN

1. **KENT COUNTY COUNCIL** (“the Council”) of Sessions House, County Hall, County Road, Maidstone ME14 1XQ of the one part; and

2) of (“the Contractor”) of *(please insert the registered address and company registration number)* of the other part.

hereinafter together referred to as the “Parties”.

## WHEREAS

1. The Contractor is proposing to submit a tender to the Council in respect of the **–** Road Asset Renewal Contract (“the Contract”).
2. The Council is willing to provide certain information with regard to the terms and conditions of employment of the workforce presently involved in the provision of the services which are the subject of this tender in consideration for the Contractor providing the undertakings appearing below.
3. The Council and the Contractor wish to ensure that confidential information revealed to the Contractor in the course of the tender remains confidential and is not used by the Contractor for any purpose other than the proposed preparation and submission of a tender for the Contract.

## NOW IT IS HEREBY AGREED AS FOLLOWS:

1. **Definitions**
2. “Purpose” shall mean the considering, evaluating, preparing of a tender in order to submit a tender for the Contract (by the Contractor).
3. “Confidential Information” shall mean the workforce data as disclosed to the Contractor but shall exclude any part of such disclosed information which:
4. Is or becomes common knowledge in any way without breach of the agreement by the Contractor; or
5. The Contractor can show was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the Council and was not acquired by the Contractor from the Council under an obligation of confidence.
6. “Workforce Data” shall mean such information relating to the workforce of the current supplier or suppliers Sub-Contractors as may be provided including (without limitation):
7. Number of employees: length of service; age of individuals and any other personal information.
8. Details of the agreed terms and conditions of employment and relevant employment policies and practices.
9. **Handling of Confidential Information**

In consideration of the provision by the Council of the Confidential Information the Contractor agrees and undertakes:

1. To maintain the same confidence and to use it only for this purpose (and for no other purpose including the submission of any other tender which it may be invited by the Council to submit);
2. To disclose the confidential Information only to such employees of the contractor as are necessary to prepare the tender submissions and then only on the same terms and conditions as are contained herein;
3. Not to copy reproduce or reduce to writing any part hereof except as may be reasonably necessary for this purpose and that any copies, reproductions or reductions in writing so made, shall be clearly marked as confidential;
4. That the confidential information which is provided in this agreement will not be disclosed (otherwise than in accordance with sub-clause (b) above) by the contractor or its employees to any person, company, firm, third party or organisation whatsoever and will be used solely for this purpose;
5. To indemnify, and keep indemnified, the Council from and against all actions, claims, demands, liabilities, damages, losses, costs, charges and expenses including (without limitation) consequential losses, loss of profit and loss of reputation and all interest, penalties both legal and other professional costs and expenses that the Council may suffer or incur in connection with, or arising (directly or indirectly) from, any breach or non-performance of the Contractor or any person to whom it has disclosed or given access to any part of the confidential information of this agreement;
6. If requested to return to the Council all the confidential information and copies thereof (irrespective of the manner in which it is recorded) or (if not so requested) to delete any confidential information which the Contractor may have entered into any computer database or other programme on the conclusion of the Council’s tendering and contract award procedure (or earlier if it be requested).
7. **Time**

The obligations contained in this agreement shall end on conclusion of the Council’s tendering exercise or following the end of the standstill period, whichever is the later.

If the Contractor is not successful in relation to the Council’s tendering exercise, the obligations contained in this agreement shall end five years from the date of this agreement, but without affecting the liability of either party for breach of this agreement before then.

1. **No Warranty**

The Contractor acknowledges and accepts that the Council makes no representation or warranty as to the completeness; accuracy or reasonableness of the workforce data or any part thereof and no such representation or warranty shall be implied. The Council is not liable to the Contractor or to any person to whom the Contractor discloses the confidential information if it is relied on.

1. **Notices**

All notices under this agreement shall be made in writing, sent by email, facsimile transmission, via pro contract (if available) or first class, registered or recorded delivery post to the party being served at its address specified above or at such address of which such party shall have given notice as aforesaid, and marked for the attention of the party’s authorised signatory of this agreement.

The date of service shall be deemed to be the day after the day upon which notice was transmitted or posted.

1. **Entire Agreement, Governing Law and Jurisdiction**

This agreement constitutes the entire agreement and understanding between the parties in respect of the confidential information and supersedes all previous agreements and undertakings in such respect.

The interpretation, construction and effect of this agreement shall be governed and construed in all respects with the laws of England and the parties hereby shall submit to the non-executive jurisdiction of the English courts.

This agreement and the supply of confidential information does not constitute an offer by the Council to award the Contract to the Contractor and does not impose an obligation on either party to continue with the tendering process in connection with the Contract.

**This agreement has been entered into on the date stated at the beginning of it.**

Signed by (name of director) for and on behalf of the Contractor

Signed by the authorised signatory of the Council

# **Anti-Collusion** **Certificate**

1. We certify that:
2. This tender is a bona-fide tender;
3. We have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person;
4. We have not and we undertake that we will not before the award of any contract for the Services:

1. Communicate to any person other than the person calling for this tender or a person duly authorised by him the amount or approximate amount of the tender or proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender;
2. Enter into any agreement or arrangement with any person that he shall refrain from tendering, that he will withdraw any tender once offered or vary the amount of any tender to be submitted;
3. Pay, give or offer to pay or give any sum of money, inducement or other valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the Services any act or thing of the sort described at (a) or (b) above.

2. We further certify that the principles described in paragraphs 1(iii), (a), (b) and (c) above have been, or will be, brought to the attention of all sub-contractors, suppliers and associated companies providing Services or materials connected with the tender and any contract entered into with such sub-contractors, suppliers or associated companies will be made on the basis of compliance with the above principles by all parties.

3. In this certificate, the word “individuals” includes any individuals and anybody or association, corporate or unincorporated; “any agreement or arrangement” includes any transaction, formal or informal and whether legally binding or not; and “the Services” means the Goods and/or Services in relation to which this tender is made.

Dated this day of 20

Signature: in the capacity of

Duly authorised to certify the contents of this Anti-Collusion Certificate for and on behalf of:

Postal Address:

Fax No: Telephone No:

# **Freedom of Information Exemption** **Form**

**Provision of SS17064 Road Asset Renewal Contract**

FREEDOM OF INFORMATION ACT 2000 (FOI) EXEMPTION FORM

**GUIDANCE**

Kent County Council (“the Employer”) encourages its Bidders to take their own legal advice about the Freedom of Information Act 2000 (“the Act”). The Employer shall not be held liable for any actions claims or costs in relation to the Act, howsoever arising.

**The Employer considers that the following information is likely to be captured by the “confidential” (s.41 of the Act absolute exemption) and/or “commercial interest” (s.43 of the Act qualified exemption) and therefore maybe subject to the Public Interest test:**

1. Trade secrets; or
2. Financial, commercial, scientific, technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates; or
3. Where disclosure could prejudice the competitive position of that person in the conduct of his/her profession or business or otherwise in his/her occupation; or
4. Where disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

***NB:*** Bidders should note that claiming blanket confidentiality of tender documentation breaches current government guidelines provided to the employer and will not be accepted, therefore rendering the entire tender documentation disclosable under the Freedom of Information Act.

***NB:*** Bidders should also note that the Employer may, despite the Bidder claiming that certain information is exempt and marking it as “confidential” or “commercially sensitive” within this form, consider disclosing such information in the event of that Employer being legally obliged to disclose information following a complaint.

**PROCEDURE**

**1. Please specify below the relevant clauses or documentation containing the information you claim is exempt.**

We consider that pricing schedules and technical specifications are most likely to be covered by one or other of the above exemptions and would therefore not, normally, be disclosed. *Each document claimed under the exemptions should be clearly marked as “confidential” or “commercially sensitive”.*

**CONFIDENTIAL INFORMATION:**

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| --- | --- |
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**COMMERCIALLY SENSITIVE INFORMATION:**

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2. The Employer is obliged to consider whether something, which its provider claims is confidential, is truly confidential. In those instances where the Employer does not agree with the exemption claimed, it will always consult with the provider before disclosing the information.

Where the Employer decides to release such information, it will only do so in the following circumstances:

* Where the provider consents other than in circumstances where the Employer is legally obliged to disclose information following a complaint; or
* Where the information or information of a similar type is generally available to the public (e.g. where a Minister would give such information in answer to a Parliamentary Question); or
* Where the provider has been advised, at the time that the information is received, that the information will be released; or
* Where the Employer believes that the public interest would be better served by disclosing rather than by refusing to disclose the information. In this instance, the views of the provider will be sought in advance of a decision being made. Where the provider refuses to agree to disclosure of the information, the provider is able to refer the matter to the Information Commissioner at the provider’s expense.

Signature: Date:

Name: Position:

1. **Sub-Contractors**

Tenderers must state if any part of their proposed offering requires the use of sub-contractors. The County Council reserves the right to reject the use of any particular subcontractor.

|  |  |
| --- | --- |
| **Name, address, Company Number and contact details of Subcontractor** | **Activity Details proposed for this contract** |
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The use of any subcontractor shall not relieve the Contractor of any liabilities or obligations of this contract.

1. **Contract Data Part Two**

Please complete the table below, this will be inserted into Schedule 3 for the successful tenderer at Contract Award.

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **PART TWO – DATA PROVIDED BY THE *CONTRACTOR*** | | | | | | | | | |
|  |  | Completion of the data in full, according to the Options chosen, is essential to create a complete contract. | | | | | | | |
|  |  |  | | | | | | | |
| **1 General** | | | | | | | | | |
|  |  | The *Contractor* is | | | | | | | |
|  |  |  | | | | | | | |
|  |  | Name | |  | | | | | |
|  |  |  | | | | | | | |
|  |  | Address for communications | |  | | | | | |
|  |  |  | | | | | | | |
|  |  | Address for electronic communications | |  | | | | | |
|  |  |  | | | | | | | |
|  |  | The *fee percentage* is | |  | | % | | | |
|  |  |  | | | | | | | |
|  |  | The *service areas* are | |  | | | | | |
|  |  |  | | | | | | | |
|  |  | The *key persons* are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | Name (1) | |  | | | | | |
|  |  |  | | | | | | | |
|  |  | Job | |  | | | | | |
|  |  |  | | | | | | | |
|  |  | Responsibilities | |  | | | | | |
|  |  |  | | | | | | | |
|  |  | Qualifications | |  | | | | | |
|  |  |  | | | | | | | |
|  |  | Experience | |  | | | | | |
|  |  |  | | | | | | | |
|  |  | Name (2) | |  | | | | | |
|  |  |  | | | | | | | |
|  |  | Job | |  | | | | | |
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|  |  | Responsibilities | |  | | | | | |
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|  |  | Qualifications | |  | | | | | |
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|  |  | Experience | |  | | | | | |
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|  |  | The following matters will be included in the Early Warning Register | | | | | | | |
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| **2 The Contractor’s main responsibilities** | | | | | | | | | |
| If the *Contractor* is to provide Scope for its plan |  | The Scope provided by the *Contractor* for its plan is in | | | | |  | | |
|  |  |  | | | | | | | |
| **3 Time** | | | | | | | | | |
| If a plan is to be identified in the Contract Data |  | The plan identified in the Contract Data is | | | | |  | | |
|  |  |  | | | | | | | |
| **5 Payment** | | | | | | | | | |
| If Option A, C or E is used |  | The *price list* is | | | | |  | | |
|  |  |  | | | | | | | |
| If Option A or C is used |  | The tendered total of the Prices is | | | | |  | | |
|  |  |  | | | | | | | |
| **Resolving and avoiding disputes** | | | | | | | | | |
|  |  |  | | | | | | | |
|  |  | The *Senior Representatives* of the *Contractor* are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | Name (1) | | |  | | | | |
|  |  |  | | | | | | | |
|  |  | Address for communications | | |  | | | | |
|  |  |  | | | | | | | |
|  |  | Address for electronic communications | | |  | | | | |
|  |  |  | | | | | | | |
|  |  | Name (2) | | |  | | | | |
|  |  |  | | | | | | | |
|  |  | Address for communications | | |  | | | | |
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|  |  | Address for electronic communications | | |  | | | | |
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| **X10: Information modelling** | | | | | | | | | |
| If Option X10 is used |  |  | | | | | | | |
|  |  |  | | | | | | | |
| If an *information execution plan* is to be identified in the Contract Data |  | The *information execution plan* identified in the Contract Data is | | |  | | | | |
|  |  |  | | | | | | | |
| **Y(UK)1: Project Bank Account** | | | | | | | | | |
| *If Option Y(UK)1 is used* |  | The *project bank* is | | | | | | | |
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|  |  |  | | | | | | | |
|  |  | *named suppliers* are | | | | | | | |
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| **Data for the Schedule of Cost Components (used only with Options C or E)** | | | | | | | | | |
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|  |  | The listed items of Equipment purchased for work on this contract, with an on cost charge, are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | Equipment | time-related on cost charge | | | | | per time period | |
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|  |  | The rates for special Equipment are | | | | | | | |
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|  |  | Equipment | rate | | | | |  | |
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|  |  | The rates for Defined Cost of manufacture and fabrication outside the Service Areas by the *Contractor* are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | category of person | rate | | | | |  | |
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|  |  | The rate for people providing *shared services* outside the Service Areas are | | | | | | | |
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|  |  | *shared service* | category of person | | | | | rate | |
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| **Data for the Short Schedule of Cost Components (used only with Option A)** | | | | | | | | | |
|  |  |  | | | | | | | |
|  |  | The *people rates* are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | category of person | unit | | | | | rate | |
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|  |  | The published list of Equipment is the edition current at the Contract Date of the list published by | | | | | |  | |
|  |  |  | | | | | | | |
|  |  | The percentage for adjustment for Equipment in the published list is | | | | | |  | % |
|  |  |  | | | | | | | |
|  |  | (state plus or minus) The rates for other Equipment are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | Equipment | rate | | | | |  | |
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|  |  | The rates for Defined Cost of manufacture and fabrication outside the Service Areas by the Contractor are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | category of person | rate | | | | |  | |
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|  |  | The rate for people providing shared services outside the Service Areas are | | | | | | | |
|  |  |  | | | | | | | |
|  |  | shared service | category | | | | | rate | |
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1. **Parent Company Guarantee**

**THIS DEED** is dated [DATE]

**PARTIES**

1. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Guarantor).
2. **THE KENT COUNTY COUNCIL** of County Hall, Maidstone, Kent ME14 1XQ (hereinafter together called "the Contracting Authority").

**BACKGROUND**

1. By an agreement dated on or about the date of this guarantee (Agreement which term includes all amendments to variations of or supplements to it from time to time in force) the Contracting Authority has agreed to engage [INSERT NAME] (Contractor) to provide [ ] services.
2. It is a condition of the Agreement that the Contractor procures the execution and delivery to the Contracting Authority of a parent company guarantee substantially in the form of this guarantee.
3. The Guarantor has agreed to guarantee the due performance of the Agreement by the Contractor.
4. It is the intention of the parties that this document be executed as a deed.

**AGREED TERMS**

* + 1. INTERPRETATION
       1. Unless the context requires otherwise, the definitions and rules of interpretation in the Agreement shall apply in this guarantee.
       2. A reference in this deed to this guarantee shall be construed as a reference to this deed of guarantee.
    2. OBLIGATIONS OF THE GUARANTOR

In consideration of the Contracting Authority entering into the Agreement with the Contractor, the Guarantor:

as primary obligor guarantees to the Contracting Authority the due and punctual performance by the Contractor of each and all of the obligations, representations, warranties, duties and undertakings of the Contractor under and pursuant to the Agreement when and if such obligations, representations, warranties, duties and undertakings shall become due and performable according to the terms of such Agreement;

agrees, in addition to its obligations set out in clause 2(a), to indemnify the Contracting Authority on demand against all losses which may be awarded against the Contracting Authority or which the Contracting Authority may otherwise incur arising out of, under or otherwise in connection with the Agreement whether arising under statute, contract or at common law including without limitation by reason of any breach by the Contractor of its obligations, representations, warranties, duties and undertakings under and/or pursuant to the Agreement save that, subject to the other provisions of this guarantee (including without limitation clause 2(c)), this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Contractor under the Agreement; and

agrees to indemnify the Contracting Authority on demand against all losses whether arising under statute, contract or at common law which may be awarded against the Contracting Authority or which the Contracting Authority may otherwise incur if any obligation guaranteed by the Guarantor is or becomes totally or partially unenforceable, invalid or illegal as if the obligation guaranteed 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 obligation guaranteed had not become unenforceable, invalid or illegal.

* + 1. LIABILITY

The Guarantor agrees that it shall not in any way be released from liability under this guarantee by any act, omission, matter or other thing whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this guarantee including, without limitation and whether or not known to the Guarantor:

any arrangement made between the Contractor and the Contracting Authority; or

any alteration in the obligations undertaken by the Contractor whether by way of any addendum or variation referred to in clause 4 or otherwise; or

any waiver or forbearance by the Contracting Authority whether as to payment, time, performance or otherwise; or

the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Contractor or any other person; or

any unenforceability, illegality or invalidity of any of the provisions of the Agreement or any of the Contractor's obligations under the Agreement, so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity; or

any legal limitation, disability, incapacity or other circumstances relating to the Contractor, or any other person; or

the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Contractor or any other person.

* + 1. ADDENDUM OR VARIATION

The Guarantor by this guarantee authorises the Contractor and the Contracting Authority to make any addendum or variation to the 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 guarantee.

* + 1. GUARANTEE
       1. This guarantee shall be a primary obligation of the Guarantor and accordingly the Contracting Authority shall not be obliged before enforcing this guarantee to take any action in any court or arbitral proceedings against the Contractor, to make any claim against or any demand of the Contractor, to enforce any other security held by it in respect of the obligations of the Contractor under the Agreement or to exercise, levy or enforce any distress, diligence or other process of execution against the Contractor. In the event that the Contracting Authority brings proceedings against the Contractor, the Guarantor shall be bound by any findings of fact, interim or final decision award or judgement made by an adjudicator, arbitrator or court in such proceedings.
       2. This guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Contractor, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Agreement have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Contracting Authority may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.
    2. OUTSTANDING PAYMENTS
       1. Until all amounts which may be or become payable under the Agreement or this guarantee have been irrevocably paid in full, the Guarantor shall not as a result of this guarantee or any payment or performance under this guarantee be subrogated to any right or security of the Contracting Authority or claim or prove in competition with the Contracting Authority against the Contractor or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Contracting Authority.
       2. The Guarantor shall not hold any security from the Contractor in respect of this guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Contracting Authority.
       3. Until all amounts which may be or become payable under the Agreement or this guarantee have been irrevocably paid in full, if (notwithstanding the provisions of clause 6.1 and clause 6.2) the Guarantor has any rights of subrogation against the Contractor or any rights to prove in a liquidation of the Contractor, the Guarantor agrees to exercise such rights in accordance with the directions of the Contracting Authority.
    3. CHANGE OF CONTROL

The Guarantor shall procure that, during the term of this guarantee, there shall be no Change of Control of the Contractor.

* + 1. PAYMENT AND EXPENSES
       1. Each payment to be made by the Guarantor under this guarantee shall be made in pounds sterling, free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Contracting Authority 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.
       2. The Guarantor shall pay interest on any amount due under this 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) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
       3. The Guarantor shall reimburse the Contracting Authority for all legal and other costs (including VAT) incurred by the Contracting Authority in connection with the enforcement of this guarantee.
    2. SETTLEMENT

Any settlement or discharge between the Contracting Authority and the Contractor and/or the Guarantor shall be conditional upon no settlement with security or payment to the Contracting Authority by the Contractor or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without limiting the Contracting Authority's other rights hereunder) the Contracting Authority shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the Contracting Authority has placed upon such settlement or security or the amount of any such payment.

* + 1. WARRANTIES
       1. The Guarantor warrants and confirms to the Contracting Authority :

that it is duly incorporated with limited liability and validly existing under the laws of England;

that it has full power under its memorandum and articles of association or equivalent constitutional documents in the jurisdiction in which it is established to enter into this guarantee;

that it has full power to perform the obligations expressed to be assumed by it or contemplated by this guarantee;

that it has been duly authorised to enter into this guarantee;

that it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;

that this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;

that all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained; and

that it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which may affect its ability to perform under this guarantee.

* + - 1. The Guarantor warrants and undertakes to the Contracting Authority that it will take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this guarantee and to implement the provisions of this guarantee.
      2. The Guarantor warrants and confirms to the Contracting Authority that it has not entered into this guarantee in reliance upon, nor has it been induced to enter into this guarantee by any representation, warranty or undertaking made by or on behalf of the Contracting Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this guarantee.
    1. ASSIGNMENT

The Contracting Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee.

* + 1. NOTICES
       1. Any notice to or demand on the Guarantor to be served under this guarantee may be delivered or sent by first-class recorded delivery post or telex or facsimile transmission to the Guarantor at its address appearing in this guarantee or at such other address as it may have notified to the Contracting Authority in accordance with this clause 12.
       2. Any such notice or demand shall be deemed to have been served:

if delivered, at the time of delivery; or

if posted, at 10.00 am on the second day after it was put into the post; or

if sent by telex or facsimile process, at the expiration of 2 hours after the time of despatch, if despatched before 3.00 pm on any day, and in any other case at 10.00 am on the next day.

* + - 1. In proving service of a notice or demand 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 pre-paid first-class recorded delivery letter or that the telex or facsimile message was properly addressed and despatched, as the case may be.
    1. WAIVER
       1. No delay or omission of the Contracting Authority in exercising any right, power or privilege under this guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Contracting Authority provided for in this guarantee are cumulative and not exclusive of any rights or remedies provided by law.
       2. A waiver given or consent granted by the Contracting Authority under this guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
       3. A waiver by the Contracting Authority shall not constitute a continuing waiver and shall not prevent the Contracting Authority from subsequently enforcing any of the provisions of this guarantee.
    2. SEVERABILITY

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this guarantee.

* + 1. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this guarantee is not intended to, and does not, give to any person who is not a party to this guarantee any rights to enforce any provisions contained in this guarantee except for any person to whom the benefit of this guarantee is assigned or transferred in accordance with clause 11.

* + 1. GOVERNING LAW
       1. This guarantee and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) is governed by and shall be construed in accordance with English law.
       2. The Guarantor submits to the exclusive jurisdiction of the English courts for all purposes relating to this guarantee and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims).
    2. ENTIRE AGREEMENT
       1. This guarantee contains the whole agreement between the parties relating to the transactions contemplated by this guarantee and supersedes all previous agreements between the parties relating to the transactions.
       2. Each party acknowledges that in entering into this guarantee it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this guarantee and the documents referred to in it) made by or on behalf of any other party before the date of this guarantee. Each party waives all rights and remedies which, but for this clause 17.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.
       3. Nothing in clause 17.1 limits or excludes any liability for fraud.

This deed has been entered into on the date stated at the beginning of it.

**EXECUTION AS A DEED**

**EXECUTED as a Deed by the Council**

|  |  |
| --- | --- |
| The COMMON SEAL of  **THE KENT COUNTY COUNCIL**  was affixed in the presence of:  …………………………………  Authorised Signatory  …………………………………  Print Name of Authorised Signatory |  |

**Notes for Contractor on Execution as a Deed**

1. For the purpose of execution as a deed, two forms are provided for execution, one for the Council and the other for the Contractor. For execution by the Contractor four methods of execution, (A) to (D) are provided for use as appropriate. The full name of the Contractor (whether an individual, a company or other body) should be inserted where indicated at top of the form. This applies irrespective of the method used.
2. For public and private companies incorporated and registered under the Companies Act, the three principal methods of execution as a deed are:
   1. Through signature by a Director and the Company Secretary or by two Directors.
   2. By affixing the company’s common seal in the presence of a Director and the Company Secretary or of two Directors or other duly authorised officers; or
   3. Signature by a single Director in the presence of a witness who attests the signature
3. Where the Employer or Contractor is an individual, he should use method **(D)** and sign where indicated in the presence of a witness who should then sign and set out his name and address

E**xecuted** as a Deed by **the Contractor**

namely ……………………………………………………………………………………………..

|  |  |
| --- | --- |
| **(A) EXECUTED as a deed by the Contractor** acting by a Director and the Company Secretary / two Directors **of the Company** | |
| …………………………………  Print Name of Director | ………………………………  Signature Director |
| …………………………………  Print Name of Director / Company Secretary | ……………………………  Signature Director / Company Secretary |

|  |  |
| --- | --- |
| **(B) EXECUTED as a Deed by the Contractor** By affixing hereto the common seal **of the company** | |
| The COMMON SEAL of  (CONTRACTORS NAME)  was affixed in the presence of  …………………………………  Signature Director  …………………………………  Print Name of Director  …………………………………  Signature Company Secretary/Director  …………………………………  Print Name of Company Secretary/Director |  |

|  |  |
| --- | --- |
| **(C) EXECUTED as a deed by the Contractor** by attested signature of a single Director **of the Company** | |
| …………………………………  Print Name of Director | …………………………………  Signature Director |
| In the presence of  Witness’ signature ………………………….…. (Print Name) ………..………………………………  Witness’ address ………………………………………………………………………………………….  Witness’ occupation ……………………………………………………………………………………… | |

|  |  |
| --- | --- |
| **(D) EXECUTED as a deed by the Contractor** by attested signature **of the individual** | |
| …………………………………  Print Name of Individual | …………………………………  Signature Individual |
| In the presence of  Witness’ signature ………………………………. (Print Name) ………………………………………  Witness’ address ………………………………………………………………………………………….  Witness’ occupation ………………………………………………………………………………………... | |

**EXECUTION UNDER HAND**

**IN WITNESS** whereof this Agreement has been executed by the Parties in accordance with their respective constitutions:

|  |
| --- |
| Signed for and on behalf of  **THE KENT COUNTY COUNCIL**  …………………………………  Authorised Signatory  …………………………………  Print Name of Authorised Signatory |

|  |
| --- |
| Signed for and on behalf of **[THE CONTRACTOR]** in the presence of:  …………………………………  Authorised Signatory  …………………………………  Print Name of Authorised Signatory |