

MPF2 MPF2 MPF2

Major Projects Framework 2

Parent Company Guarantee



PROCUREMENT



AGREEMENT

between

Robertson Construction Group

and

()

PARENT COMPANY GUARANTEE

Ref: ()

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AGREEMENT between

- (1) Robertson[**company name**] ([company number]) whose registered office is at [registered office] (“the Guarantor”) and
- (2) [company name] [company number] whose registered office is at [] (“the Employer”)

Background

- A. By an agreement in writing (**BUILDING CONTRACT**) dated [DATE] and made between the Employer and **Robertson Construction Group** incorporated and registered in Scotland with company number SC347921 whose registered office is at 10 Perimeter Road, Pinefield Industrial Estate, Elgin, Moray, IV30 6AE (**CONTRACTOR**), the Contractor agreed to (design and **OR** complete the design of and) construct (DESCRIBE WORKS) at [WORKS ADDRESS] (**WORKS**).
- B. The Guarantor (the parent company of the Contractor) has agreed to guarantee the Contractor's due performance of its duties or obligations under the Building Contract.

Agreed terms**INTERPRETATION**

- 1.1.1 The definitions and rules of interpretation in this clause and the background apply in this Agreement.

Business Day means a day (other than a Saturday, Sunday or public holiday in Scotland) when banks in Edinburgh are open for business;

Expiry Date means the earlier of the termination of this Agreement in accordance with its terms or the date of issue of the Certificate of Practical Completion/Completion Certificate under the Building Contract

Insolvency Event means a person suffers an insolvency event if it:

- 1.1.1 is unable to (or admits inability to) pay its debts as they fall due; or
- 1.1.2 enters into any composition or arrangement with one or more of its creditors with a view to rescheduling any of its indebtedness; or
- 1.1.3 suffers any of the following events:
- (a) moratorium of any indebtedness, winding-up, dissolution, suspension of payments, administration, reorganisation (as a voluntary arrangement, scheme of arrangement or otherwise), petition for bankruptcy, composition,

compromise, assignment or arrangement with any creditor;
or

- (a) any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer is appointed in respect of that person or anyof its assets; or
- (b) any event occurs in relation to that person that is analogous to the events listed in this definition.

If a person carries out a solvent, voluntary winding up that is solely for the purpose of reconstruction or amalgamation, that person does not suffer an Insolvency Event.

- 1.2 Clause headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a *company* shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 1.8 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to *writing* or *written* includes faxes but not e-mail.
- 1.1 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this Agreement) at any time.
- 1.2 References to clauses are to the clauses of this Agreement.

- 1.14 Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words "without limitation" following them.

2 GUARANTEE

- 2.1 The Guarantor guarantees the due and punctual performance by the Contractor of the Contractor's duties and obligations to the Employer under the Building Contract. This Agreement is a continuing guarantee and remains in full force and effect until the Expiry Date.
- 2.2 If the Contractor suffers an Insolvency Event or if the Employer terminates the Contractor's employment under the Building Contract under clause [] of the Building Contract, the Guarantor shall pay to the Employer, without any deduction or set-off, the amount of any loss, debt, damage, interest, cost and expense incurred by the Employer resulting from such termination.

3 AMENDMENTS TO THE BUILDING CONTRACT

The Building Contract may be modified, amended or supplemented in any way without the Guarantor's consent. The Guarantor's liability under this Agreement (which includes the Contractor's duties, obligations and liabilities under the Building Contract as modified, amended or supplemented) shall not be affected by:

- 3.1.1 any such modification, amendment or supplement; or
- 3.1.2 any invalidity, avoidance or termination of the Building Contract; or
- 3.1.3 any waiver, release, concession, allowance of time, compromise or forbearance given to, or made with, the Contractor. The terms of this Agreement shall apply to the terms of any such compromise as they apply to the Building Contract.
- 3.1.4 the dissolution, amalgamation, reconstruction, reorganisation of the Contractor or any other person.

4 EMPLOYER DOES NOT HAVE TO PURSUE CONTRACTOR

The Employer does not have to pursue any remedy against the Contractor before proceeding against the Guarantor under this Agreement.

5. INSOLVENCY OF CONTRACTOR

Without affecting clause 2.2, if the Contractor suffers an Insolvency Event that shall not affect or reduce the Guarantor's liability under this Agreement.

6. PRIORITY OF CLAIMS AGAINST THE CONTRACTOR

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

7. LIMIT OF LIABILITY

The Employer may not recover any more under this Agreement in respect of any matter than the Employer would be entitled to recover from the Contractor in respect of that same matter, net of any set off and further that the Guarantor shall be entitled to rely upon the same defences as to liability (including without limitation any right of set-off and/or counterclaim) as the Contractor may raise or be entitled to raise in connection with the Building Contract. The Employer may not start proceedings against the Guarantor under this Agreement in respect of any claim if any proceedings against the Contractor in respect of that claim would be time barred.

8. ASSIGNATION

8.1 The Employer may assign or charge the benefit of this Agreement to any person to whom the Employer lawfully assigns or charges the benefit of the Building Contract.

8.2 The Guarantor and the Contractor may not assign or charge the benefit of this Agreement without the Employer's written consent.

8.3 The Employer shall notify the Guarantor of any assignation. If the Employer fails to do this, the assignation shall still be valid.

8.4 The Guarantor shall not contend that any person to whom the benefit of this Agreement is assigned under clause 8.1 may not recover any sum under this Agreement because that person is an assignee and not a named party to this Agreement.

9 NOTICES

9.1 Any notice or other communication required to be given under this Agreement shall be in writing and shall be delivered personally, sent by pre-paid first-class post, recorded delivery or commercial courier to each party required to receive the notice or communication at its address:

9.1.1 ROBERTSON CONSTRUCTION GROUP LIMITED: [CONTACT]
[ADDRESS]; and

9.1.2 [EMPLOYER]: [CONTACT] [ADDRESS],

or as otherwise specified by the relevant party by notice in writing to each other party.

9.2 Any notice or other communication shall be deemed to have been duly received:

9.2.1 if delivered personally, when left at the address and for the person referred to
in this clause; or

9.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

9.2.3 if delivered by commercial courier, on the date, and at the time, that the courier's delivery receipt is signed.

9.3 A notice or other communication required to be given under this Agreement shall not be validly given if sent by e-mail.

9.4 This clause 9 shall not apply to the service of any proceedings or other documents in any legal action.

10 THIRD PARTY RIGHTS

A person who is not a party to this Agreement shall not have any rights under or in connection with it.

11. GOVERNING LAW AND JURISDICTION

11.1 This Agreement 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 the law of Scotland.

11.2 The parties irrevocably agree that the courts of Scotland shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF this Agreement on this and the preceding [] pages is executed as follows:-

Subscribed for and on behalf of the **Guarantor**:

at on day of 2022 as follows:-

..... (Director/Authorised Signatory)

..... (Full name of Director/Authorised Signatory)
..... (Director/Authorised Signatory/Witness)
..... (Full name of Director/Authorised Signatory/ Witness)
..... (Address of Witness, if applicable)
.....

Subscribed for and on behalf of the **Employer:**

at onday of2022 as follows:-

..... (Director/Authorised Signatory)
..... (Full name of Director/Authorised Signatory)
..... (Director/Authorised Signatory/Witness)
..... (Full name of Director/Authorised Signatory/ Witness)
..... (Address of Witness, if applicable)



Kevin Stewart
Framework Manager

M 07447 849 470

E k.stewart@robertson.co.uk

Robertson House
Castle Business Park, Stirling, FK9 4TZ

Contact us on 0845 266 7629
www.procurementhub.co.uk

Find us on social media



Procurement Hub
Part of Places for People
Group Support Centre, 4 The Pavilions,
Preston, PR2 2YB