

**Dated**

**2012**

**THE SHEFFIELD CITY COUNCIL**



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**AUTHORITY TIER 2 KEY SUB-  
CONTRACTOR COLLATERAL  
WARRANTY**

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**This Agreement** is made on the                      day of                      2012

**Between**

- (1) **THE SHEFFIELD CITY COUNCIL of TOWN HALL, SHEFFIELD, S1 2HH** (which expression includes its permitted successors in title and assigns) (the **Authority**); and
- (2) [REDACTED] whose registered number is [REDACTED] and whose registered office is at [REDACTED] (the **Tier 2 Key Sub-Contractor**);

**Whereas**

- (A) The Service Provider has entered into a contract (the **Contract**) with the Authority pursuant to which the Service Provider has agreed to undertake the Project.
- (B) The Service Provider and the First Tier Sub-Contractor have entered into a First Tier Sub-Contract under which the First Tier Sub-Contractor has agreed to provide services required for the purposes of the Project, and the First Tier Sub-Contractor has entered into the Tier 2 Key Sub-Contract with the Tier 2 Key Sub-Contractor, under which the Tier 2 Key Sub-Contractor has agreed to provide services (the **Tier 2 Key Sub-Contract Services**).
- (C) The Tier 2 Key Sub-Contractor is required to give a warranty in this form to the Authority.

**1 Definitions and Interpretation**

Unless expressly defined otherwise in this Agreement, any defined term in this Agreement shall have the same meaning given to such term in the Tier 2 Key Sub-Contract.

**2 Warranties and Undertakings**

- 2.1 The Tier 2 Key Sub-Contractor warrants to the Authority that it has complied with and fulfilled and shall continue to comply with and fulfil all of its duties and obligations expressed in, or arising out of, the Tier 2 Key Sub-Contract, and that in performing the same it has used and shall use all the reasonable skill and care to be expected of suitably qualified and experienced Sub-Contractors performing services similar to those Services being or to be undertaken by the Tier 2 Key Sub-Contractor under the Tier 2 Key Sub-Contract. In particular and without limiting the generality of the foregoing the Tier 2 Key Sub-Contractor covenants with the Authority that it has carried out and will continue to carry out the Tier 2 Key Sub-Contract Services in accordance with the Tier 2 Key Sub-Contract and duly observe and perform all its duties and obligations thereunder.

- 2.2 The Tier 2 Key Sub-Contractor agrees that it will not amend the terms and conditions of the Tier 2 Key Sub-Contract without the prior written approval of the Authority (not to be unreasonably withheld) and the Tier 2 Key Sub-Contractor shall, following any such amendment, provide a copy of the amended Tier 2 Key Sub-Contract to the Authority within ten (10) Business Days of such amendment being made.

### **3 Copyright**

The Tier 2 Key Sub-Contractor grants to the Authority like rights and assumes like obligations to those which are granted to and assumed in favour of the Sub-Contractor under the Tier 2 Key Sub-Contract in connection with copyright, Intellectual Property Rights, Trade Marks and Data.

### **4 Assignment**

- 4.1 Subject to Clause 85 of the Contract, the benefit of and the rights of the Authority under this Agreement may be assigned without the consent of the parties hereto on two (2) occasions only and the Authority will notify the parties hereto in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.
- 4.2 The Tier 2 Key Sub-Contractor shall not be entitled to contend that any such assignee under clause 4.1 is precluded from recovering under this Agreement any loss incurred by such assignee resulting from any breach of this Agreement, (whenever happening) by reason that such person is an assignee and not the named promisee hereunder.

### **5 Insurance**

- 5.1 The Tier 2 Key Sub-Contractor hereby covenants with the Authority that it has effected policies of insurance required to be maintained under the Tier 2 Key Sub-Contract. The Tier 2 Key Sub-Contractor warrants that it shall maintain such insurances with reputable insurers carrying on business in the United Kingdom from the date hereof until its obligations under the Tier 2 Key Sub-Contract have been satisfied in full provided that such insurance is generally available to Tier 2 Key Sub-Contractors specialising in the fields in which the Tier 2 Key Sub-Contractor specialises at a commercially realistic cost.
- 5.2 If for any period such insurances are not available on the terms set out in clause 5.1, the Tier 2 Key Sub-Contractor shall forthwith inform the Authority, and shall obtain in respect of such period such reduced level of insurances as is available and as would be fair and reasonable in the circumstances for the Tier 2 Key Sub-Contractor to obtain.
- 5.3 As and when reasonably required by the Authority the Tier 2 Key Sub-Contractor shall produce for inspection documentary evidence that the insurance referred to in

Clause 5.1 is being properly maintained and that payment has been made in respect of the last preceding premium due thereunder.

## **6 Extraneous rights**

- 6.1 This Agreement shall not negate or diminish any duty or liability otherwise owed by the Tier 2 Key Sub-Contractor to the Authority.
- 6.2 The obligations and liabilities of the Tier 2 Key Sub-Contractor under or pursuant to this Agreement shall not be released, diminished or in any other way be affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Authority by any person nor by any action or omission of any person whether or not such action or omission might give rise to an independent liability of such person to the Authority.

## **7 Contracts (Rights of Third Parties) Act 1999**

This Agreement is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **8 Savings**

- 8.1 The Authority shall not be entitled to commence any legal proceedings against the Tier 2 Key Sub-Contractor under this Agreement before the Contract has been terminated or is otherwise of no force or effect.
- 8.2 Notwithstanding any other provision of this Agreement the duties and liabilities owed by the Tier 2 Key Sub-Contractor hereunder shall be no wider or greater than the duties and liabilities the Tier 2 Key Sub-Contractor would owe to the Sub-Contractor under the Tier 2 Key Sub-Contract if (and the same defences to any claim brought by the Authority shall be available to the Tier 2 Key Sub-Contractor as if) in lieu of this Agreement the Authority had been a joint employer under the Tier 2 Key Sub-Contract provided that the Tier 2 Key Sub-Contractor shall not be entitled to raise in defence of any claim brought under this Agreement or to reduce any amount otherwise payable under this Agreement any set-off or counterclaim available to the Tier 2 Key Sub-Contractor under the Tier 2 Key Sub-Contract.
- 8.3 The Authority shall not be entitled to commence proceedings against the Tier 2 Key Sub-Contractor under this Agreement in respect of any claim after the date on which any proceedings against the Tier 2 Key Sub-Contractor in respect of such claim would, if brought under the Tier 2 Key Sub-Contract, have been barred or statute barred (whichever shall be the first to occur).

**9 Not used**

**10 Severability**

If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

**11 Waiver**

No term or provision of this Agreement shall be considered as waived by any party to this Agreement unless a waiver is given in writing by that party. No waiver shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

**12 Governing law and interpretation**

The law of this Agreement is English law and the English courts shall have jurisdiction with regard to all matters arising under it.

**13 Notices**

13.1 Any notice to be given or served by one party to the other party under this Agreement shall be served as follows:

13.1.1 Such notice shall either be delivered personally or by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number as set out in clauses 13.1.1 or 13.1.2 (as the case may be) or to such other address or facsimile number as a party may have notified in writing to the other party by not less than five (5) Business Days prior notice. Service shall be deemed to have been effected as follows:

13.1.1.1 if personally delivered, at the time of delivery to the addressee;

13.1.1.2 if sent by first class pre-paid post on the second (2nd) Business Day after it is put in the post; and

13.1.1.3 if sent by facsimile transmission, it shall be deemed to be received where there is a confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the sender (to be confirmed in writing) that the facsimile has been received in legible form:

13.1.1.3.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; and

13.1.1.3.2 by 11am on the next following next Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.

13.1.2 For the purposes of clause 13.1.1 the Authority's details are:

Position: Authority Representative

Address: Sheffield City Council, Howden House, Sheffield S1 2SH

Facsimile No: 0114 273 6015

Attention: [REDACTED]

13.1.3 For the purposes of clause 17.1.1 the Tier 2 Key Sub-Contractor's details are:

Address: [REDACTED]

Facsimile No: [REDACTED]

Attention: The Company Secretary

13.2 In proving service under this clause 13 it shall be sufficient to prove that personal delivery was made, or as the case may be, that the letter was properly addressed and posted or, as the case may be, the facsimile transmission was properly addressed and despatched.

## **14 Agency**

14.1 Save as otherwise provided in this Agreement, no Party shall be or be deemed to be an agent of any other Party nor shall it hold itself out as having authority or power to bind any other Party in any way.

## **15 Counterparts**

15.1 This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

In witness whereof this document is executed by the parties or their duly authorised representatives as a Deed and delivered on the date of this agreement.



Executed as a Deed by the affixing of the ) .....  
common seal of **THE SHEFFIELD CITY** ) Authorised Officer  
**COUNCIL** in the presence of: )  
) .....  
) Authorised Officer

Executed as a Deed by ) .....  
**AGGREGATE INDUSTRIES UK** ) Director  
**LIMITED** )  
acting by two directors or by a director and ) .....  
its secretary )  
) Director/Secretary