

## MEMORANDUM OF UNDERSTANDING

This Agreement is made

### **BETWEEN:**

- (1) The **European Federation of Foundation Contractors**, a European association of companies in the foundations and ground improvement works industry, organised under the laws of England and Wales having its office at Forum Court, Office 2 First Floor, Saphir House, 5 Jubilee Way, Faversham Kent ME13 8GD United Kingdom (hereinafter called "EFFC" which expression, where the context so admits, shall include its successors and permitted assigns); and
- (2) The **Deep Foundations Institute**, an association of companies in the foundations and ground improvement works industry organised and incorporated under the laws of the United States of America having its registered office at 326 Lafayette Avenue, Hawthorne, New Jersey 07506 USA (hereinafter called "DFI" which expression, where the context so admits, shall include its successors and permitted assigns)

EFFC and DFI being together called the "Parties" and either one the "Party".

### **PREAMBLE:**

#### WHEREAS

1/ The Parties published the "Guide to Working Platforms" in January 2020. The document is a compilation of the experience of the Parties' membership, from across the globe, in how to manage the design, installation and maintenance of Working Platforms.

2/ It was always considered by the authors of the Guide that at some point it would be useful to publish a second edition. This would be timed as and when newer methods or approaches emerged. In particular, three areas are of interest:

- a) The use of existing or new methods of testing working platforms.
- b) Any research into the measurement of rig track pressures and how that may translate into design assumptions.
- c) New methods relating to the design of working platforms and the determination of their bearing capacity.

2/ For this purpose, the DFI/EFFC has formed a working group of technical experts to consider how we make progress in the three areas identified above. The research will move at differing speeds but collaboration across the Parties members will ensure that similar activity that may have already been done in one country may be widely shared. This will mean that our research will be novel and have the benefit of considerable experience.

3/ EFFC and DFI have agreed to provide funding for the first part of this research; namely the study of new methods of testing platforms. The other areas may or may not require financial support, but regardless they are not in scope for this first tranche of funding.

4/ When significant progress has been made with the three subjects the "Guide to Working Platforms" would be revised by the working group and the second edition published.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter set forth, the Parties agree as follows (hereinafter referred to as the "Agreement"):

## **1. INTERPRETATION**

- a) The headings in the MOU shall not be used in its interpretation.
- b) The singular includes the plural, the masculine includes the feminine, and vice versa where the context requires.
- c) If there is conflict between provisions of the MOU, the last to be written chronologically shall prevail, unless otherwise specified in this Agreement.

## **2. EFFECTIVE DATE OF THE MOU**

This Agreement shall come into force at the date of its signature by both Parties, hereinafter the "**Effective Date**".

## **3. AGREED TERMS OF THE MOU**

- 3.1 It is agreed that the Platform Working Group shall be convened and comprised of experts in the field of deep foundation construction. The group should be contractor led, but provide good representation to consultants, suppliers, rig manufacturers and academics.
- 3.2 The DFI/EFFC shall provide joint Chairs for the group who shall be responsible for the balance of representation of different categories of expert and have the final say on participation in the group. In the case of a dispute between the Chairs as to the balance of representation, then the DFI Chair shall have the final decision.
- 3.4 **All** meeting costs shall, wherever possible, be covered by a company or organisation that is participating in the Working Group. Where this is not the case these costs should be met by the EFFC if the meeting is held in Europe or the DFI if the meeting is held in the US. These costs are limited to the provision of a venue and catering and are at the discretion of the EFFC and DFI. Participants in the Working Group are expected to cover their own flight and accommodation costs to attend meetings, unless otherwise agreed with either the EFFC or DFI.
- 3.5 Any other costs that are deemed necessary for the completion of the project shall be jointly and equally covered by the EFFC and DFI. Any such costs shall be identified and submitted as a budget request to both the DFI and EFFC by the Working Group Chairs. In particular the testing research and development will need an approved fund from the DFI and EFFC to finance some field and laboratory work.

- 3.6 The EFFC, DFI or Working Group may seek sponsorship income to cover any of the costs associated with the work. Both organisations shall establish separate funds to cover the costs that may be incurred in their respective territories. The terms of the sponsorship agreement shall be determined by the Working Group Chairs in consultation with the DFI and EFFC.
- 3.7 Any expenditure from the project funds should be approved by the Chairs of the Working Group within the budget set by the DFI and EFFC Officers. Should there be a surplus at the end of the project and no further expenditure required the US and European funds shall revert to the DFI and EFFC respectively.
- 3.8 Should a third party be contracted to carry out work on behalf of the Working Group, e.g. field research, lab testing or other technical activities, the EFFC or the DFI shall act as the sole representative for the EFFC/DFI Platform Working Group in any Outsourcing Agreement, contingent on the territory in which the third party is operating.

#### **4. INTELLECTUAL PROPERTY**

- 4.1 For the purpose of this MOU, the Parties agree that EFFC and DFI shall both be beneficial owners of all intellectual property rights for the work produced by the Platform Working Group. Therefore EFFC and DFI will jointly have the ownership of any intellectual rights in relation to the Platform Guide. The intellectual property rights of patrimonial nature includes without limitation: the right to use, license, assign, reengineer, promote, modify, adapt, publish, market, supply, sell, reproduce, commercialize, exploit part of or the entire Guide (including all its documentation and future updates) and, generally, any patrimonial prerogatives of the author on its creation.

#### **5. EXCLUSIVITY**

The Parties shall exclusively co-operate and support each other in good faith for the duration of this MOU.

#### **6. DURATION, TERMINATION OF THE AGREEMENT**

- 6.1 This MOU shall remain valid until all obligations of the Parties have been fulfilled in accordance with the terms and conditions of this MOU. **But** latest 5 years after signature
- 6.2 This MOU may be terminated in the following events:
- (a) In the event a Party fails to remedy any default or fails to perform any of its obligations under the MOU within 30 days of receipt of notice of such default from the other Party. Upon expiration of this time period, the notifying Party shall be entitled to immediately terminate the Agreement or suspend the performance of one of its essential obligations under the Agreement for the duration of the time period the defaulting Party fails to remedy the default;
  - (b) If the Parties terminate the MOU by unanimous written agreement;
  - (c) If one of the Parties is being made bankrupt or subject to bankruptcy proceedings, liquidation, legal settlement or composition, discontinuation of activity or if he is on any similar situation resulting from a procedure of the same

nature existing in national legislation and regulation.

## **7. LANGUAGE AND LAW**

This MOU is drafted and shall be construed and interpreted in the English language.

This MOU shall be governed by the laws of England and Wales.

## **8. ARBITRATION**

In the event that the Parties disagree on any point arising out of or in connection with this MOU, they shall make all efforts to settle the disagreement by amicable discussions within Thirty (30) days of the date one Party formally refers the issue by written notice to the other.

Should the amicable procedure fail, any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration. The arbitration shall take place in London, United Kingdom and be settled by one or more arbitrators in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The language to be used in the arbitral proceedings shall be the English language. The arbitration award shall be final and binding on both Parties.

## **9. NOTICES**

Any notices shall be effective upon receipt if given in writing at the following addresses:

- for EFFC: Forum Court, Office 2 First Floor, Saphir House, 5 Jubilee Way, Faversham, Kent ME13 8GD, United Kingdom
- for DFI: 326 Lafayette Avenue, Hawthorne, New Jersey 07506 USA

Correspondence between the Parties shall be in the English language.

## **10. CONFIDENTIALITY**

Each Party hereby undertakes to the other Party to keep confidential (to the extent permitted by law) all information, which it receives from the other Party in connection with this Agreement.

This confidentiality undertaking shall survive 3 years after the termination of this MOU.

## **11. SEVERABILITY**

In the event that a provision contained herein shall be or become illegal or unenforceable, the other provisions shall remain in full force and effect. In this case, the Parties shall replace any illegal or unenforceable provision which shall be as close as possible to the Parties' original intention.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the date indicated herebelow in two (2) original copies by their duly authorized representatives, each Party receiving one (1) original copy thereof.

Made on this \_\_\_\_\_ day of \_\_\_\_\_, 2022

In \_\_\_\_\_ .

**For and on behalf of EFFC**

**For and on behalf of DFI**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Signature:

Signature:

## TERMS OF REFERENCE FOR GOVERNANCE

The Parties are:

- (1) The **European Federation of Foundation Contractors**, a European association of companies in the foundations and ground improvement works industry, organised under the laws of England and Wales having its office at Forum Court, Office 2 First Floor, Saphir House, 5 Jubilee Way, Faversham, Kent ME13 8JY, United Kingdom (hereinafter called "EFFC" which expression, where the context so admits, shall include its successors and permitted assigns); and
- (2) The **Deep Foundations Institute**, an association of companies in the foundations and ground improvement works industry organised and incorporated under the laws of the United States of America having its registered office at 326 Lafayette Avenue, Hawthorne, New Jersey 07506 USA (hereinafter called "DFI" which expression, where the context so admits, shall include its successors and permitted assigns)

1/ The Parties have entered into a Memorandum of Understanding [Ref: MOU EFFC-DFI Working Platforms Revision B Jan 2022] to provide funding for research into the study of new methods of testing platforms.

2/ The Parties will govern the spend of the funds through a governance committee comprising a minimum of one person from each of the Parties that shall be the Secretary or their delegate.

3/ Submissions for funding will be made to the committee by the Chairs of the Working Platform Task Group. This will be submitted in writing setting out the sum due, the recipient and a brief purpose for the funding. These submissions may be made at any time as required by the research programme.

4/ Twice a year in June and December a schedule of the submittal requests shall be prepared by the Chairs which shall be sent to the committee. This schedule shall then be cross checked with the sums actually paid.

5/ Once a year, as a minimum, the schedule and the sums actually paid will be formally communicated to the Executive Committees of both Parties. Approval of the cumulative spend shall be ratified in a quorate meeting of each of the Parties and recorded as such in minutes.

6/ Complaints raised by the Parties or the committee in relation to the spending of the funds shall be taken up with the Chairs of the Working Platform Task Group as soon as possible. Regardless of the nature of the complaint any liability properly approved by the committee shall be honoured.