

SCHEDULE 10 - Parent Company Guarantee

[Insert details as required otherwise state "Not Used"

Delete these notes before Contract execution.]

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

- (A) 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]** (Supplier) to provide [] services.
- (B) It is a condition of the Agreement that the Supplier procures the execution and delivery to the Contracting Authority of a parent company guarantee substantially in the form of this guarantee.
- (C) The Guarantor has agreed to guarantee the due performance of the Agreement by the Supplier.
- (D) It is the intention of the parties that this document be executed as a deed.

AGREED TERMS

1. INTERPRETATION

- 1.1 Unless the context requires otherwise, the definitions and rules of interpretation in the Agreement shall apply in this guarantee.
- 1.2 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 Supplier, the Guarantor:

- (a) as primary obligor guarantees to the Contracting Authority the due and punctual performance by the Supplier of each and all of the obligations,

representations, warranties, duties and undertakings of the Supplier 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;

- (b) 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 Supplier 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 Supplier under the Agreement; and
- (c) 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 Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. 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:

- (a) any arrangement made between the Supplier and the Contracting Authority; or
- (b) any alteration in the obligations undertaken by the Supplier whether by way of any addendum or variation referred to in clause 4 or otherwise; or
- (c) any waiver or forbearance by the Contracting Authority whether as to payment, time, performance or otherwise; or
- (d) 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 Supplier or any other person; or
- (e) any unenforceability, illegality or invalidity of any of the provisions of the Agreement or any of the Supplier's obligations under the Agreement, so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity; or

- (f) any legal limitation, disability, incapacity or other circumstances relating to the Supplier, or any other person; or
- (g) the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Supplier or any other person.

4. ADDENDUM OR VARIATION

The Guarantor by this guarantee authorises the Supplier 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.

5. GUARANTEE

- 5.1 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 Supplier, to make any claim against or any demand of the Supplier, to enforce any other security held by it in respect of the obligations of the Supplier under the Agreement or to exercise, levy or enforce any distress, diligence or other process of execution against the Supplier. In the event that the Contracting Authority brings proceedings against the Supplier, 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.
- 5.2 This guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Supplier, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Supplier 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.

6. OUTSTANDING PAYMENTS

- 6.1 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 Supplier 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.
- 6.2 The Guarantor shall not hold any security from the Supplier 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.

6.3 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 Supplier or any rights to prove in a liquidation of the Supplier, the Guarantor agrees to exercise such rights in accordance with the directions of the Contracting Authority.

7. CHANGE OF CONTROL

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

8. PAYMENT AND EXPENSES

8.1 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.

8.2 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.

8.3 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.

9. SETTLEMENT

Any settlement or discharge between the Contracting Authority and the Supplier and/or the Guarantor shall be conditional upon no settlement with security or payment to the Contracting Authority by the Supplier 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.

10. WARRANTIES

10.1 The Guarantor warrants and confirms to the Contracting Authority :

- (a) that it is duly incorporated with limited liability and validly existing under the laws of England;
- (b) 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;

- (c) that it has full power to perform the obligations expressed to be assumed by it or contemplated by this guarantee;
 - (d) that it has been duly authorised to enter into this guarantee;
 - (e) that it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;
 - (f) that this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
 - (g) that all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained; and
 - (h) 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.
- 10.2 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.
- 10.3 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.

11. 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.

12. NOTICES

- 12.1 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.
- 12.2 Any such notice or demand shall be deemed to have been served:
- (a) if delivered, at the time of delivery; or
 - (b) if posted, at 10.00 am on the second day after it was put into the post; or
 - (c) 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.

12.3 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.

13. WAIVER

13.1 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.

13.2 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.

13.3 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.

14. 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.

15. 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.

16. GOVERNING LAW

16.1 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.

16.2 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).

17. ENTIRE AGREEMENT

17.1 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.

- 17.2 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.
- 17.3 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.