

TOTAL	100%
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Weightings for technical merit and functional fit, availability and price must total 100%.

If 2 or more Suppliers have the same score, the Buyer will use either:

- the score from the criteria with the highest weighting, then the next highest weighting until the tie is broken; or
- require the tied Suppliers to provide best and final offers.

Schedule 8 - Deed of guarantee

This deed of guarantee is made on [insert date date/month/year] ————— 20[]

between:

(1) — [Insert the name of the guarantor] a company incorporated in England and Wales with number [insert company no.] whose registered office is at [insert details of the guarantor's registered office here] [OR] [a company incorporated under the Laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("guarantor"); in favour of

and

(2) THE BUYER whose offices are XXXXXXXXXXXXXXXXXXXX ('Beneficiary')

Whereas:

(A) The guarantor has agreed, in consideration of the Buyer entering into the Call-Off Contract with the Supplier, to guarantee all of the Supplier's obligations under the Call-Off Contract.

(B) It is the intention of the Parties that this document be executed and take effect as a deed.

In consideration of the Buyer entering into the Call-Off Contract, the Guarantor hereby agrees with the Buyer as follows:

DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee, unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms will have the same meaning as they have for the purposes of the Call-Off Contract.

'Call-Off Contract'	means [the Guaranteed Agreement] made between the Buyer and the <u>Supplier on [insert date]</u>
'Guaranteed Obligations'	means all obligations and liabilities of the Supplier to the Buyer under the Call-Off Contract together with all obligations owed by the Supplier to the Buyer that are supplemental to, incurred under, ancillary to or calculated by reference to the Call-Off Contract

References to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Call-Off Contract) apply now, and as amended, varied, restated, supplemented, substituted or novated in the future.

~~Unless the context otherwise requires, words importing the singular are to include the plural and vice versa.~~

~~References to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect.~~

~~The words 'other' and 'otherwise' are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible.~~

~~Unless the context otherwise requires, reference to a gender includes the other gender and the neuter.~~

~~Unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument also apply if amended, extended or re-enacted from time to time.~~

~~Unless the context otherwise requires, any phrase introduced by the words 'including', 'includes', 'in particular', 'for example' or similar, will be construed as illustrative and without limitation to the generality of the related general words.~~

~~References to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee.~~

References to liability are to include any liability whether actual, contingent, present or future.

Guarantee and indemnity

The Guarantor irrevocably and unconditionally guarantees that the Supplier duly performs all of the guaranteed obligations due by the Supplier to the Buyer.

If at any time the Supplier will fail to perform any of the guaranteed obligations, the Guarantor irrevocably and unconditionally undertakes to the Buyer it will, at the cost of the Guarantor:

- ~~fully perform or buy performance of the guaranteed obligations to the Buyer~~
- ~~as a separate and independent obligation and liability, compensate and keep the Buyer compensated against all losses and expenses which may result from a failure by the Supplier to perform the guaranteed obligations under the Call-Off Contract~~

~~As a separate and independent obligation and liability, the Guarantor irrevocably and unconditionally undertakes to compensate and keep the Buyer compensated on demand against all losses and expenses of whatever nature, whether arising under statute, contract or at common Law, if any obligation guaranteed by the guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the guarantor's liability will be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.~~

Obligation to enter into a new Contract

~~If the Call-Off Contract is terminated or if it is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable, the Guarantor will, at the request of the Buyer enter into a Contract with the Buyer in the same terms as the Call-Off Contract and the obligations of the Guarantor under such substitute agreement will be the same as if the Guarantor had been original obligor under the Call-Off Contract or under an agreement entered into on the same terms and at the same time as the Call-Off Contract with the Buyer.~~

Demands and notices

Any demand or notice served by the Buyer on the Guarantor under this Deed of Guarantee will be in writing, addressed to:

[Address of the Guarantor in England and Wales]

[Email address of the Guarantor representative]

For the Attention of [insert details]

or such other address in England and Wales as the Guarantor has from notified to the Buyer in writing as being an address for the receipt of such demands or notices.

Any notice or demand served on the Guarantor or the Buyer under this Deed of Guarantee will be deemed to have been served:

- _____ if delivered by hand, at the time of delivery
- _____ if posted, at 10am on the second Working Day after it was put into the post
- _____ if sent by email, at the time of despatch, if despatched before 5pm on any Working Day, and in any other case at 10am on the next Working Day

In proving Service of a notice or demand on the Guarantor or the Buyer, it will be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the fax message was properly addressed and despatched.

Any notice purported to be served on the Buyer under this Deed of Guarantee will only be valid when received in writing by the Buyer.

BENEFICIARY'S PROTECTIONS

The Guarantor will not be discharged or released from this Deed of Guarantee by:

- _____ any arrangement made between the Supplier and the Buyer (whether or not such arrangement is made with the assent of the Guarantor)
- _____ any amendment to or termination of the Call-Off Contract
- _____ any forbearance or indulgence as to payment, time, performance or otherwise granted by the Buyer (whether or not such amendment, termination, forbearance or indulgence is made with the assent of the Guarantor)
- _____ the Buyer doing (or omitting to do) anything which, but for this provision, might exonerate the Guarantor

~~This Deed of Guarantee will be a continuing security for the Guaranteed Obligations and accordingly:~~

- ~~it will not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Buyer in exercising its rights under this Deed of Guarantee~~

- ~~it will not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Buyer, the Guarantor or any other person~~

- ~~if, for any reason, any of the Guaranteed Obligations is void or unenforceable against the Supplier, the Guarantor will be liable for that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor~~

- ~~the rights of the Buyer against the Guarantor under this Deed of Guarantee are in addition to, will not be affected by and will not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Buyer~~

~~The Buyer will be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes. The making of a demand (whether effective, partial or defective) relating to the breach or non-performance by the Supplier of any Guaranteed Obligation will not preclude the Buyer from making a further demand relating to the same or some other Default regarding the same Guaranteed Obligation.~~

~~The Buyer will not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to:~~

- ~~obtain judgment against the Supplier or the Guarantor or any third party in any court~~

- ~~make or file any claim in a bankruptcy or liquidation of the Supplier or any third party~~

- ~~take any action against the Supplier or the Guarantor or any third party~~

- ~~resort to any other security or guarantee or other means of payment.~~

~~No action (or inaction) by the Buyer relating to any such security, guarantee or other means of payment will prejudice or affect the liability of the Guarantor.~~

~~The Buyer's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by Law. The Buyer's rights may be exercised as often as the Buyer deems expedient.~~

~~Any waiver by the Buyer of any terms of this Deed of Guarantee, or of any Guaranteed Obligations, will only be effective if given in writing and then only for the purpose and upon the terms and conditions on which it is given.~~

~~Any release, discharge or settlement between the Guarantor and the Buyer will be conditional upon no security, disposition or payment to the Buyer by the Guarantor or any other person being void, set aside or ordered to be refunded following any enactment or Law relating to liquidation, administration or insolvency or for any other reason. If such condition will not be fulfilled, the Buyer will be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Buyer will be entitled to retain this security before and after the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Buyer from the Guarantor for such period as the Buyer may determine.~~

GUARANTOR INTENT

~~Without prejudice to the generality of Clause 5 (The Buyer's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee will extend from time to time to any variation, increase, extension or addition of or to the Call-Off Contract and any associated fees, costs or expenses.~~

RIGHTS OF SUBROGATION

~~The Guarantor will, at any time when there is any Default in the performance of any of the Guaranteed Obligations by the Supplier or any Default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:~~

- ~~• _____ of subrogation and indemnity~~
- ~~• _____ to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations~~
- ~~• _____ to prove in the liquidation or insolvency of the Supplier~~

~~The Guarantor will do this in accordance with the Buyer's written instructions and will hold any amount recovered as a result of the exercise of such rights on trust for the Buyer and pay the same to the Buyer on first demand.~~