**DYNAMIC FRAMEWORK**

**SCHEDULE 12**

**GUARANTEE**

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| --- | --- | --- |
| **VERSION** | **DATE** | **COMMENT** |
| 1.0 | 10 June 2020 | Initial Release |
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1. GUARANTEE

**[Insert the name of the Guarantor]**

**‑ and ‑**

**[Insert name of Customer]**

**DEED OF GUARANTEE**

**in respect of the obligations of the Supplier under the   
Call-Off Contract**

**This** **Deed OF GUARANTEE** is made the                      day of                      20[ ]

**BETWEEN:**

(1) [Insert the name of the Guarantor] [a company incorporated in England and Wales with number [        ] whose registered office is at [insert details of the Guarantor's registered office here]] [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

(2) **[Insert name of Customer]** whose principal office is at [Insert address of Customer] ("**Beneficiary**")

**WHEREAS:**

(A) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.

(B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.

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

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1. **DEFINITIONS AND INTERPRETATION**
   1. In this Deed of Guarantee:
      1. unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
      2. the words and phrases below shall have the following meanings:
         1. "**Guarantee Cap**" means the Guaranteed Agreement Charges divided by the number of whole calendar months in the Guaranteed Agreement Term multiplied by 9;
         2. "**Guaranteed Agreement**" means the Call-Off Contract made between the Beneficiary and the Supplier on [insert date]; and
         3. "**Guaranteed Agreement Charges**" means £[ ]; **[Note to bidders – this will be a sum calculated prior to entering into the Guarantee which is based on 9 months worth of charges (on average over the term of the Call-Off Contract) based on the estimated contract value as set out in the Call-Off Competition ITT].**
         4. "**Guaranteed Agreement Term**" means the Call-Off Term (as defined in the Guaranteed Agreement);
         5. "**Guaranteed Obligations**" means all obligations and liabilities of the Supplier to the Beneficiary and the Customer Related Parties under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;
         6. "**Parties**" means the parties to this Deed of Guarantee;
      3. references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
      4. unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
      5. references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
      6. 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;
      7. unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
      8. unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
      9. unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
      10. references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
      11. references to liability are to include any liability whether actual, contingent, present or future.
2. **GUARANTEE AND INDEMNITY**
   1. The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary and each Customer Related Party to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary and each Customer Related Party.
   2. The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary or Customer Related Party all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary or any Customer Related Party under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
   3. If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary and each Customer Related Party that, upon first demand by the Beneficiary or Customer Related Party it shall, at the cost and expense of the Guarantor:
      1. fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary or Customer Related Party in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary or Customer Related Party; and
      2. as a separate and independent obligation and liability, indemnify and keep the Beneficiary and any Customer Related Party indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary or Customer Related Party may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
   4. As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary and any Customer Related Party indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary or Customer Related Party may suffer or incur 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 shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.
   5. Notwithstanding Clauses 2.2 to 2.4 above and subject to Clause 2.6, the Guarantor's aggregate liability to the Beneficiary or any Customer Related Party(ies) under this Deed of Guarantee whether arising in tort, for breach of contract or otherwise shall be limited to an amount equal to the Guarantee Cap.
   6. Nothing in this Deed of Guarantee excludes or limits the Guarantor's liability for:
      1. fraud; or
      2. death or personal injury caused by its negligence or that of its employees or agents.
3. **OBLIGATION TO ENTER INTO A NEW CONTRACT**

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

1. **DEMANDS AND NOTICES**
   1. Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:
      1. [Address of the Guarantor in England and Wales];
      2. for the attention of [insert details],

or such other address in England and Wales as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address for the receipt of such demands or notices.

* 1. Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:
     1. if delivered by hand, at the time of delivery, provided that delivery is between 9.00am and 5.00pm on a Working Day and otherwise delivery will be deemed to have occurred at 9.00am on the next Working Day; or
     2. if posted, at the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day and otherwise delivery will be deemed to have occurred at 9.00am on the next Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).
  2. In proving service of a notice or demand on the Guarantor or the Beneficiary 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 prepaid first class recorded delivery letter.
  3. Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

1. **BENEFICIARY'S PROTECTIONS**
   1. The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
   2. This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
      1. it shall 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 Beneficiary or any Customer Related Party in exercising its rights under this Deed of Guarantee;
      2. it shall 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 Beneficiary or any Customer Related Party, the Guarantor or any other person;
      3. if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
      4. the rights of the Beneficiary or any Customer Related Party against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary or any Customer Related Party.
   3. The Beneficiary and any Customer Related Party shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary or any Customer Related Party from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
   4. The Beneficiary or any Customer Related Party shall 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, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
   5. The Beneficiary's or any Customer Related Party's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary or Customer Related Party deems expedient.
   6. Any waiver by the Beneficiary or any Customer Related Party of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
   7. Any release, discharge or settlement between the Guarantor and the Beneficiary or any Customer Related Party shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary or any Customer Related Party shall 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 Beneficiary or any Customer Related Party shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary or Customer Related Party may determine.
2. **GUARANTOR INTENT**

Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

1. **RIGHTS OF SUBROGATION**
   1. The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/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:
      1. of subrogation and indemnity;
      2. to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
      3. to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's or Customer Related Party's written instructions and shall hold any amount recovered as a result of the exercise of such rights up to such amount as the Beneficiary determines in its sole discretion represents the amount of the Guarantor's liabilities under this Deed of Guarantee (the "**Guarantee Estimate Amount**") on trust for the Beneficiary or Customer Related Party and pay the same to the Beneficiary or Customer Related Party on first demand. The Guarantor may retain for its own account or otherwise deal with any such amounts recovered in excess of the Guarantee Estimate Amount as the Guarantor may determine in its sole discretion. The Guarantor hereby confirms that it has not taken any security from the Supplier (other than cross indemnities or other security taken in the ordinary course of its financial arrangements with its Affiliates) and agrees not to take any further security until Beneficiary receives all monies payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary or Customer Related Party.

1. **DEFERRAL OF RIGHTS**
   1. Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary or Customer Related Party, it will not:
      1. claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement; or
      2. take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement.
   2. Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary or any Customer Related Party, it will not following the occurrence of a Financial Distress Event or Supplier Termination Event:
      1. exercise any rights it may have to be indemnified by the Supplier;
      2. demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
      3. claim any set-off or counterclaim against the Supplier.
   3. If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary or any Customer Related Party and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.
2. **REPRESENTATIONS AND WARRANTIES**
   1. The Guarantor hereby represents and warrants to the Beneficiary and each Customer Related Party that:
      1. the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
      2. the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
      3. the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3 have been duly authorised by all necessary corporate action and do not contravene or conflict with:
         1. the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
         2. any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
         3. the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
      4. all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
      5. this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.
3. **PAYMENTS AND SET-OFF**
   1. All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary 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.
   2. The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
   3. The Guarantor will reimburse the Beneficiary and Customer Related Party for all legal and other costs (including VAT) incurred by the Beneficiary or any Customer Related Party in connection with the enforcement of this Deed of Guarantee.
4. **GUARANTOR'S ACKNOWLEDGEMENT**

The Guarantor warrants, acknowledges and confirms to the Beneficiary and any Customer Related Party that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary or any Customer Related Party (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

1. **ASSIGNMENT**
   1. The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Deed of Guarantee.
   2. The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.
2. **SEVERANCE**

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

1. **THIRD PARTY RIGHTS**
   1. Subject to Clause 14.2 and 14.3, a person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
   2. The Guarantor acknowledges and agrees that the Beneficiary has entered into this Deed of Guarantee and the Guaranteed Agreement for its own benefit and for the benefit of each Customer Related Party. The Beneficiary shall enforce any provision of this Deed of Guarantee on behalf of each Customer Related Party except to the extent that it is not able to so do as a result of Applicable Law.
   3. If and to the extent that the Beneficiary is not able to recover a Loss incurred by an Customer Related Party under the provisions of this Clause in any instance where a claim to recover Loss is not, by operation of law or decision of a court, deemed to be enforceable by the Beneficiary itself (including, for example, where it is deemed that the Beneficiary has no standing to enforce the claim for recover of Loss for whatever reason), that Customer Related Party shall be entitled to enforce this Deed of Guarantee against the Guarantor in its own right in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 but only to the extent that those rights relate to the liabilities to the Customer Related Party under the Guaranteed Agreement, subject always to the liability provisions in this Deed of Guarantee, which shall apply mutatis mutandis to claims made by the Customer Related Party and even though the relevant Clause may be silent as to which person is intended to have the benefit of the relevant obligation, refer only to the Beneficiary or not specifically identify an Customer Related Party.
2. **GOVERNING LAW**
   1. This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
   2. The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
   3. Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one (1) or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
   4. The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
   5. [Provision dealing with the appointment of English process agent by a non English incorporated Guarantor] [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.][**Bidder Note: Only required if Guarantor is overseas.]**

**IN WITNESS** whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[*Insert name of the Guarantor*] acting by [*Insert/print names*]

Director

Director/Secretary