

PARENT COMPANY GUARANTEE – DEED OF GUARANTEE

This deed is dated

201[3]

Parties

- (1) [parent company's name], a company incorporated and registered in England and Wales with company number [company number] whose registered office is at [the company's registered address] (the "Guarantor").
- (2) The University of Nottingham, a body corporate incorporated by Royal Charter and registered with number RC000664, of University Park, Nottingham NG7 2RD (the "University").

Background

- (A) The University has agreed to enter into an agreement with [name of supplier company], a company incorporated and registered in England and Wales with company number [company number] whose registered office is at [the company's registered address] (the "Supplier") for the supply of [the details of the goods/services] (the "Agreement").
- (B) The Agreement will not be effective until execution of this deed by the Guarantor that will guarantee the Supplier's obligations to the University under and arising out of such Agreement.

Agreed

1. Guarantee and Indemnity

- 1.1 The Guarantor irrevocably and unconditionally guarantees the Supplier's obligations to the University under and arising out of the Agreement.

- 1.2 As a separate and primary obligation, the Guarantor irrevocably and unconditionally agrees to indemnify and keep indemnified the University on demand against any loss or liability which the University incurs or suffers as a direct or indirect consequence of the failure of the Supplier to discharge its obligations pursuant to the Agreement.

- 1.3 The Guarantor agrees to pay interest on all amounts due pursuant to this deed from the date they became due demand until payment (as well after as before judgment) at 4% per annum above the Bank of England base rate from time to time such interest accruing on a day to day basis.

2. Continuing Security

The deed will extend to the full balance from time to time owing by

the Supplier to the University and will be a continuing guarantee, notwithstanding any intermediate payment, partial settlement or other matter whatsoever.

3. Primary Obligation

The Guarantor's obligations under this deed are those of primary obligor and exist irrespective of any total or partial invalidity or unenforceability of any purported obligation or liability of the Supplier to the University pursuant to the Agreement.

4. Preservation of Rights

- 4.1 The Guarantor acknowledges and agrees that none of its liabilities under this deed will be terminated, reduced, discharged or otherwise affected by nor will this deed be discharged or reduced by reason of:

- 4.1.1 any amendment, variation, extension, release, discharge, compromise, dealing with, exchange or renewal (however material or fundamental) of the Agreement any right or remedy that the University may have now or in the future from or against the

	Supplier or any other person in respect of the obligations and liabilities of the Supplier;		arrangement had not occurred and any such assurance, security or payment had not been made or given.
4.1.2	any act or omission by the University or any other person in taking up, perfecting or enforcing any security or guarantee from or against the Supplier or any other person or the invalidity or unenforceability of any such security or guarantee;	7.	No Competition
4.1.3	any grant of time, indulgence, waiver or concession to the Supplier or any other person;	7.1	The Guarantor warrants to the University that it has not and will not take, exercise or receive any security, rights or remedies against the Supplier (including a right to claim in any bankruptcy, liquidation, administration or insolvency) until all debts and liabilities due or incurred by the Supplier to the University have been paid in full, regardless of:
4.1.4	any Insolvency Event;		
4.1.5	any claim or enforcement of payment from the Supplier; or	7.1.1	any payments made by the Guarantor under this deed;
4.1.6	any act or omission which would not have discharged or affected the liability of the Guarantor had it been a principal debtor instead of a guarantor or by anything done or omitted to be done by any person, which, but for this provision might operate to exonerate the Guarantor.	7.1.2	any termination or purported release or cancellation of this deed; or
5.	Other Security	7.1.3	the Guarantor is aware, has knowledge of or has consented to such debts and liabilities.
	The University may enforce this deed against the Guarantor by 30 days' written notice whether or not it has made demand from, enforced any other remedy against, taken any action against or made or filed any claim in a bankruptcy, liquidation, administration or insolvency of the Supplier or any other person.	8.	Payments without set-off or counterclaim
6.	Discharge	8.1	All payments to be made by the Guarantor under this deed will be made without set-off or counterclaim and free from any deduction or withholding for taxation or like charges. If any deduction or withholding is required by law, the Guarantor will pay to the University the additional amount necessary to ensure that the University receives full payment as if there had been no deduction or withholding.
6.1	Any release, settlement, discharge or arrangement between the Guarantor and the University is conditional upon no assurance, security or payment by any person to the University being void, set aside or ordered to be refunded for any reason whatever including under any enactment, decree or regulation relating to bankruptcy, liquidation or insolvency.	8.2	A certificate or decision by the University as to any of the amounts due under this deed will, except for fraud or manifest error, be conclusive and binding on the Guarantor.
6.2	If the condition in clause 6.1 is not fulfilled the University may enforce this deed subsequently as if such release, settlement, discharge or	9.	Notices
		9.1	Any notice given under this deed will be in writing and signed by or on behalf of the party giving it and will be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post

- to the relevant party at (in the case of the Guarantor) its registered address and (in the case of the University) its principle office, or by sending it by fax to the fax number notified by the one party to the other. Any such notice will be deemed to have been received:
- 9.1.1 if delivered personally, at the time of delivery;
 - 9.1.2 in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting; and
 - 9.1.3 in the case of fax, at the time of transmission.
- 9.2 In proving such service it will be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post or that the notice was transmitted by fax to the fax number of the relevant party.
- 10. Entire Agreement**
- 10.1 Each party on behalf of itself acknowledges and agrees with the other party that:
 - 10.1.1 this deed constitutes the entire agreement and understanding between the parties and supersedes any previous arrangement, understanding or agreement between them;
 - 10.1.2 in entering into this deed neither party has relied on any Pre-Contractual Statement; and
 - 10.1.3 each party agrees that the only rights and remedies available to it or arising out of or in connection with any Pre-Contractual Statement will be for breach of contract. Nothing in this deed will, however, limit or exclude any liability for fraud.
- 11. Assignment and Novation**
- The Guarantor will not assign, novate or otherwise dispose of any or all of its rights and obligations

under this deed without the prior written consent of the University.

12. Variation

No variation of this deed will be valid unless it is in writing and signed by or on behalf of each of the parties.

13. Counterparts

This deed may be executed in any number of counterparts, each of which, when executed and delivered, will be an original, and all the counterparts together will constitute one and the same instrument.

14. Third Party Rights

- 14.1 Except as expressly provided elsewhere in this deed, a person who is not a party to this deed will not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed but this does not affect any right or remedy of a third party which exists, or is available, apart from under that Act.

- 14.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this deed are not subject to the consent of any person that is not a party to this deed.

15. Governing Law and Jurisdiction

- 15.1 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the law of England and Wales.
- 15.2 The parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

16. Interpretation

- 16.1 The rules of interpretation in this clause 16 apply in this deed (unless the context requires otherwise).
- 16.2 The headings in this deed are inserted for convenience only and will not affect its construction.
- 16.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 16.4 Unless the context otherwise requires, a reference to one gender will include a reference to the other genders.
- 16.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 16.6 A person includes a corporate or unincorporated body (whether or not having separate legal personality).
- 16.7 Any phrase introduced by the words including, includes, in particular or for example or similar will be construed as illustrative and will not limit the generality of the related general words.
- 16.8 Writing or written includes faxes but not e-mail.
- 16.9 Unless a right or remedy of a party is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party's other rights and remedies.
- 16.10 Any schedules to this deed form part of (and are incorporated into) this deed.

17. Definitions

The definitions in this clause 17 apply in this deed (unless the context requires otherwise).

"Insolvency Event" means in respect of either party:

- (a) other than for the purposes of a bona fide reconstruction or amalgamation, such party passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that party being otherwise dissolved; or
- (b) the appointment of an administrator of, or the making of an administration order in relation to, either party, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of the entity's undertaking, assets, rights or revenue; or
- (c) that party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors; or
- (d) that party being unable to pay its debts, or being capable of being deemed unable to pay its debts, within the meaning of section 123 of the Insolvency Act 1986; or
- (e) that party entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors; and

"Pre-Contractual Statement" means any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this deed or not) other than as expressly set out in this deed or any documents referred to in it.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED AS A DEED by)

[NAME OF GUARANTOR])

acting by)

Director)

Director/Secretary)

The common seal of)

THE UNIVERSITY OF NOTTINGHAM)

was affixed to this deed)

in the presence of)

Vice Chancellor/Chief Financial Officer)

Registrar)