

Dated

2006

(1) SECRETARY OF STATE FOR WORK AND PENSIONS

- and -

(2) []

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 2006

BETWEEN:

(1) [] whose registered office is at [Address] (the "Guarantor") in favour of

IN FAVOUR OF

(2) **Secretary of State for Work and Pensions** (the "Authority").

WHEREAS:

(A) This Deed of Guarantee is supplemental to the Office Services Agreement (the "Agreement") dated **[DN: date to be inserted]** between the Authority and **[DN: name of Contractor]** (the "Contractor").

Now in consideration of the Authority entering into the Agreement the Guarantor hereby agrees with the Authority as follows:

1. The Guarantor unconditionally undertakes to procure, subject to Clause 2.1 of this Deed of Guarantee, that the Contractor will duly perform all of its obligations now or hereafter due, owing or incurred by the Contractor to the Authority under or in connection with the Agreement as from time to time varied, extended, increased or replaced (with or without the Guarantor's consent) (the "Guaranteed Obligations"), provided that if any amendment or variation is made to the Agreement at a time at which the Contractor is subject to an insolvency event of the type described in Clause 59.1 and such amendment and/or variation has the effect of increasing the amount of the payment obligations of the Contractor under the Agreement, the liability of the Guarantor shall not be increased by such amendment or variation unless approved by the Guarantor in writing.
2. If at any time the Contractor shall fail to perform any of the Guaranteed Obligations, the Guarantor unconditionally undertakes that, subject to Clause 3 of this Deed of Guarantee, upon first demand made by the Authority under and in accordance with Clauses 3 and 4 of this Deed of Guarantee it shall:
 - 2.1 at its sole discretion either fully, punctually and specifically perform such Guaranteed Obligations or procure the performance of such Guaranteed Obligations by the Contractor or otherwise as if the Agreement had been directly entered into by the Guarantor and the Authority; and
 - 2.2 subject to Clause 15 of this Deed of Guarantee, indemnify and keep the Authority indemnified against all losses, damages, costs and expenses (including, without limitation, Court costs and legal fees on a solicitor and own client basis) of whatever nature which may result or which the Authority may suffer, incur or sustain arising in any way whatsoever out of a failure by the Contractor to perform the Guaranteed Obligations.
3. Any demand by the Authority under this Deed of Guarantee shall be made by the Authority only after the earliest to occur of: (a) the failure of the Contractor to cure its default in respect of the Guaranteed Obligations pursuant to, and within the time allowed by, the escalation procedures contained in the Agreement; (b) sixty (60) days after a demand from the Authority to the Contractor requiring the Contractor to remedy its default in respect of the Guaranteed Obligations where by such date the Contractor has failed to cure such default; and (c) the Contractor being deemed insolvent by reason of any of the occurrence of any of the events listed in the Schedule to this Deed of Guarantee.

4. Any demand by the Authority under this Deed of Guarantee shall be in writing, addressed to the registered office of the Guarantor (or such other address as the Guarantor has from time to time notified to the Authority in writing as being an address for the receipt of such demands) and accompanied by a statement identifying the nature of the claim by the Authority, and shall be copied to the Contractor at its registered office. The making of a demand by the Authority hereunder shall not prejudice the right of the Authority to make further demands under this Deed of Guarantee at any time and from time to time.
5. The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Contractor and the Authority (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Authority 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 Authority doing any other matter or thing which but for this provision might exonerate the Guarantor.
6. This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
 - 6.1 it shall not be discharged by any partial performance (except to the extent of such partial performance) by the Contractor of its obligations under the Agreement;
 - 6.2 it shall not be affected by any insolvency, liquidation, administration, voluntary arrangement or other incapacity of the Contractor or any other person; and
 - 6.3 the rights of the Authority 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 AUTHORITY.
7. The Authority shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Contractor or the Guarantor or any third party in any Court, or to make or file any claim in a bankruptcy or liquidation of the Contractor or any third party, or to take any action whatsoever against the Contractor or the Guarantor or any third party (other than, in the case of the Contractor, serving a copy of the notice of demand upon the Guarantor in accordance with Clause 4 of this Deed of Guarantee) or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Authority in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
8. At any time when there is any default in the performance of any of the Guaranteed Obligations by the Contractor and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, the Guarantor agrees to exercise its rights (1) of subrogation and indemnity, (2) to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Contractor's obligations and (3) to prove in the liquidation or insolvency of the Contractor, in accordance with the Authority's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Authority and pay the same to the Authority on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Contractor and agrees not to do so until the Authority receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Authority.
9. The Guarantor warrants that it is either a company or a body corporate duly organised and validly existing under the laws of England and Wales and has all power and authority to enter

into and perform the obligations contemplated by this Deed of Guarantee to be performed by it and that this Deed of Guarantee constitutes its legal, valid and binding obligation.

10. 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.
11. Any release, discharge or settlement between the Guarantor and the Authority shall be conditional upon no security, disposition or payment to the Authority 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 Authority 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 Authority 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 Authority from the Guarantor for such period as the Authority may reasonably determine.
12. 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.
13. This Deed of Guarantee shall be governed by and construed in all respects in accordance with the laws of England and Wales. Any dispute which may arise between the parties concerning this Deed of Guarantee shall be determined by the Courts of England and Wales and the parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales for such purpose. The Guarantor hereby irrevocably consents to the service of process or any other legal summons out of such courts by mailing copies thereof by registered postage prepaid to its address specified herein.
14. This Deed of Guarantee contains all the terms which the parties have agreed in relation to the subject matter of this Deed of Guarantee and supersedes any prior written or oral agreements, representations and understandings between the parties and the Contractor relating to such subject matter. Neither party to this Deed of Guarantee has been induced to enter into this Deed of Guarantee by a statement or promise which it does not contain save that this clause shall not exclude any liability which one party would otherwise have to the other in respect of any statement made fraudulently by that party.
15. In respect of any claim against the Contractor for breach of the Agreement which is the subject of this Deed of Guarantee (a "Guaranteed Claim") and in respect of any claim against the Guarantor for a breach of this Deed of Guarantee, the maximum aggregate amount which may be claimed against the Guarantor is the amount which could have been claimed against the Contractor in respect of that Guaranteed Claim after allowing for (i) any limit on the liability of the Contractor contained in the Agreement, including for the avoidance of doubt the limit set out in Clause 40.2 of the Agreement; (ii) any amounts recovered from the Contractor and the Guarantor in respect of the applicable Guaranteed Claim; and (iii) any defences available to the Contractor under the Agreement, but in calculating the amount which could have been claimed against the Contractor ignoring, and treating the amount of any such claim as not being reduced or affected in any way by:
 - 15.1 any set-off or counterclaim available to the Contractor against the Authority on any account and whether arising under at common law, in equity or under any insolvency legislation or rules other than any set-off available to the Contractor against the Authority under the Agreement;

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

Director/Secretary

SCHEDULE

The Contractor shall be deemed insolvent upon the occurrence of any of the following events:

1. a judgment or order made against the Contractor is not complied with within seven (7) days or an encumbrance takes possession or an administrative receiver or a receiver or administrator is appointed of the whole or any part of the undertaking, assets, rights or revenues of the Contractor or a distress, execution or other process is levied or enforced upon any of the assets, rights, undertaking or revenues of the Contractor and is not discharged within seven (7) days; or
2. the Contractor stops or suspends payment of its debts or is unable to or admits inability to pay its debts (within the meaning of section 123 of the Insolvency Act 1986 or otherwise but ignoring the references in that section to determination by the court) or becomes insolvent or proposes or commences negotiations with one or more of its creditors with a view to the general rescheduling of its debts or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or any class of its creditors including, without limitation, a scheme of arrangement pursuant to the Companies Act 1985 or a company voluntary arrangement pursuant to the Insolvency Act 1986; or
3. a resolution is passed, a petition is presented or an order made for the liquidation of the Contractor; or
4. a petition is presented or an application is made or notice is given or an order is made for the administration of the Contractor; or
5. the Contractor has insolvency proceedings for the purposes of the EC Regulation on Insolvency Proceedings 2000 opened in respect of it; or
6. any event occurs or proceeding is taken with respect to the Contractor in any jurisdiction to which it is subject which has an effect equivalent or similar to any of the events mentioned in sub-paragraphs (1) to (5); or
7. any steps are taken to repossess any goods having an aggregate value of more than £250,000 (two hundred and fifty thousand pounds) in the possession of the Contractor under any hire purchase, conditional sale, leasing, retention of title or similar agreement.