

Annex A - Guarantee

DATED

[2011]

GUARANTEE

between

CAMBRIDGESHIRE COUNTY COUNCIL

and

FENLAND DISTRICT COUNCIL

THIS DEED is dated [DATE]

PARTIES

- (1) CAMBRIDESHIRE COUNTY COUNCIL of Shire Hall, Castle Hill, Cambridge CB3 0AP (“the **Guarantor**”).
- (2) FENLAND DISTRICT COUNCIL of County Hall, County Road March, Cambridgeshire PE15 8NQ (“the Council”).

BACKGROUND

- (A) The Council and the Guarantor have entered into an agreement with the College of West Anglia (“the College”) dated [] 2011 (“the Agreement”) in which the Council has agreed to provide a Capital Payment in the sum of £1,341,000.00 to the College to enable the development of a technology building at a site in Wisbech, Cambridgeshire.
- (B) Clause [3] of the Agreement contains provisions for the College to repay the Capital Payment or part thereof to the Council in specified circumstances. The Guarantor has agreed to enter into this guarantee for the purpose of providing comfort to the Council.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this guarantee.

College: College of West Anglia an approved Corporation under the Further and Higher Education Act 1992

Business Day: a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London and deposits are dealt with on the London Interbank Market.

Agreement: the agreement made between the College the Council and the Guarantor, dated [DATE].

Guaranteed Obligations: all monies from time to time due or owing from the College to the Council pursuant to clause [3] of the Agreement such monies shall not exceed the sum of £1,341,000.00 .

- 1.2 A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment or re-enactment or extension and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts.

- 1.3 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.4 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.5 A reference to a clause or schedule is to a clause of, or a schedule to, this guarantee unless the context requires otherwise.
- 1.6 A reference to a **person** shall include a reference to an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.
- 1.7 A reference to **writing** or **written** includes faxes but not e-mails.
- 1.8 A reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.
- 1.9 A reference to **determine** or **determined** means, unless the contrary is indicated, a determination made at the discretion of the person making it.
- 1.10 Clause, schedule and paragraph headings shall not affect the interpretation of this guarantee.

2. GUARANTEE

- 2.1 In consideration of the Council entering into this agreement and subject to the provisions of clauses 2.2, 2.3, and 2.4 hereof the Guarantor guarantees to the Council that whenever the College does not pay any of the Guaranteed Obligations as they fall due the Guarantor shall make due payment to the Council on demand of the Guaranteed Obligations.
- 2.2 The total amount recoverable from the Guarantor under this guarantee shall not exceed £1,341.000.00.
- 2.3 The Guarantor's guarantee to the Council to pay any of the Guaranteed

Obligations shall be subject to and only arise, subsist and be enforceable in the event that the Council has first complied with its obligations under clause 2.4 below and has provided evidence to the reasonable satisfaction of the Guarantor that the College has failed to make payment of any monies due to the Council in accordance with clause [3] of the Agreement

2.4 The Council shall be obliged before taking steps to enforce any of its rights and remedies under this Guarantee to use all reasonable but commercially prudent endeavours:

- (a) to take any action or obtain judgment in any court against the College or any other person; or
- (b) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the College or any other person; or
- (c) to make demand, enforce or seek to enforce any claim, right or remedy against the College or any other person.

3. PAYMENTS

3.1 All sums payable by the Guarantor under this guarantee shall be paid in full to the Council in the currency in which the Guaranteed Obligations are payable:

- (a) without any set-off, condition or counterclaim whatsoever; and
- (b) free and clear of any deductions or withholdings whatsoever except as may be required by law or regulation which is binding on the Guarantor.

3.2 The Guarantor shall promptly deliver or procure delivery to the Council of all receipts issued to him evidencing each deduction or withholding which he has made.

3.3 The Guarantor shall not and may not direct the application by the Council of any sums received by the Council from the Guarantor under, or pursuant to, any of the terms of this guarantee.

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4. EVIDENCE OF AMOUNTS AND CERTIFICATES

Any certificate, determination or notification by the Council as to a rate or any amount payable under this guarantee is (in the absence of manifest error) conclusive evidence of the matter to which it relates and shall contain reasonable details of the basis of determination.

5. REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS

- 5.1 Any amendment to this guarantee shall be in writing and signed by or on behalf of each party.
- 5.2 Any waiver of any right or consent given under this guarantee is only effective if it is in writing and signed by the waiving or consenting party.
- 5.3 No single or partial exercise of any right under this guarantee shall prevent any further exercise of the same right or any other right under this guarantee.
- 5.4 Rights and remedies under this guarantee are cumulative and do not exclude any rights or remedies provided by law or otherwise.

6. SEVERANCE

- 6.1 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this guarantee under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.
- 6.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

7. THIRD PARTY RIGHTS

A person who is not a party to this guarantee cannot enforce or enjoy the benefit of any term of this guarantee under the Contracts (Rights of Third Parties) Act 1999.

8. NOTICES

- 8.1 Each notice or other communication required to be given under, or in connection with, this guarantee shall be:
 - (a) in writing, delivered personally or sent by pre-paid first-class letter or fax;
and
 - (b) sent:
 - (i) to the Guarantor at:
Shire Hall
Castle Hill
Cambridge

CB3 0AP

Fax: [NUMBER]

(ii) to the Council at:

Fenland Hall

County Road

March

PE15 8NQ

Fax: [NUMBER]

Attention: [NAME]

or to such other address or fax number as is notified in writing by one party to the other.

- 8.2 Any notice or other communication that a party gives shall be deemed to have been received only on actual receipt by the other party.

9. GOVERNING LAW AND JURISDICTION

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

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

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The Common Seal of
CAMBRIDGESHIRE COUNTY COUNCIL
was hereunto affixed
in the presence of

The Common Seal of
FENLAND DISTRICT COUNCIL
was hereunto affixed
in the presence of