

SOA Schedule 7 –

Performance Guarantee

<Contract title and reference number>

<Customer name>

<Supplier name>

<Guarantor name>

Contract established under SOA <SOA title and reference number>

|  |
| --- |
| INSTRUCTIONS FOR USING THIS DOCUMENT (TO BE DELETED IN FINAL EXECUTION VERSION OF SOA SCHEDULE):This is a template Performance Guarantee for use with the SOA Comprehensive Contract Conditions - ICT Products and/or Services. This performance guarantee is to be executed by the Guarantor providing the guarantee. The Guarantor may be a parent or holding company of the Supplier or another entity that has the ability to complete the obligations of the Supplier under the Contract in the event that the Supplier fails to comply with its obligations under the Contract.  If the Customer calls upon the Guarantor, under this Performance Guarantee the Guarantor is required to take on all obligations of the Supplier including stepping in to continue providing Products or Services under the Contract. Further, if the Supplier breaches any of its obligations under the Contract, and the Supplier does not remedy the breach and the Contract is then terminated for default, the Guarantor must indemnify the Customer to the full extent of the Supplier’s liability to the Customer under the Contract.  The yellow highlighted sections need to be completed. |

SOA Schedule 7 template – Issued February 2020 – Version 1.0.0

## General information

| No. | Topic | Details |
| --- | --- | --- |
|  | **Contract** | Contract name: <<insert name of contract>>  Contract number: <<insert contract reference number>>  Date of Contract: <<insert date>> |
|  | **Customer** | Name: <<insert>>  ABN or ACN: <<insert>> |
|  | **Delivery of notices to the Customer** | Physical address: <<insert>>  Postal address: <<insert>>  Email address: <<insert>> |
|  | **Supplier** | Name: <<insert>>  ABN or ACN: <<insert>> |
|  | **Guarantor** | Name: <<insert>>  ABN or ACN (if applicable): <<insert>> |
|  | **Delivery of notices to the Guarantor** | Physical address: <<insert>>  Postal address: <<insert>>  Email address: <<insert>> |

The Guarantor has fully informed itself of the obligations and liabilities of the Supplier under the Contract and agrees to provide the guarantees and indemnities stated below concerning the Contract.

# What is agreed

* 1. The Guarantor irrevocably and unconditionally guarantees to the Customer the due and punctual performance of the Supplier’s obligations under the Contract.
  2. If the Supplier (unless relieved from the performance of the Contract by the Customer, statute or a decision of a tribunal of competent jurisdiction) fails to comply with its obligations under the Contract, the Guarantor will, if the Customer requires, complete those obligations or cause them to be completed.
  3. If the Supplier breaches any of its obligations under the Contract, and the Supplier does not remedy the breach and the Contract is then terminated for default, the Guarantor must indemnify the Customer to the full extent of the Supplier’s liability to the Customer under the Contract.
  4. Without limiting the above obligations, the Guarantor must, from time to time, pay to the Customer on demand any sum which is due and payable by the Supplier to the Customer as a result of a breach of or failure to comply with the Supplier’s obligations under the Contract and which has not been paid by the Supplier to the Customer.
  5. The Guarantor will not be discharged, released or excused from this Deed by any arrangement made between the Supplier and the Guarantor with or without the consent of the Customer, any amendment of the Supplier’s obligations, or any forbearance as to payment, time, performance or otherwise.
  6. The Customer’s rights concerning this Deed will not be deemed to be waived except by notice in writing signed by the Customer. Failure or delay by the Customer to enforce any provision of this Deed will not waive the Customer’s rights.
  7. The obligations and liabilities of the Guarantor under this Deed will not exceed the obligations and liabilities of the Supplier under the Contract.
  8. If any part of this Deed is void or voidable, then that part is severed from the Deed, without affecting the continued operation of the remainder of the Deed.
  9. The laws of the State of Queensland govern this Deed and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.
  10. Where the Supplier has failed to perform any obligation under the Contract, the obligations of the Guarantor will continue even though the Supplier has been dissolved, declared bankrupt, or has been made subject to external administration procedures under the *Corporations Act 2001* (Cth) or any other law.
  11. The rights and obligations under this Deed will continue until released by the Customer. This release must be in the form of a written notice issued by the Customer.
  12. Any notice or other form of communication (**notice**) which may be given to or served on either the Customer or Guarantor under this Deed must be in writing and must be sent by pre-paid postage, delivered by hand or emailed to the addresses specified in the ‘General Information’ details above.
  13. The Customer may, alternatively, serve a notice at any time on the Guarantor’s registered office.
  14. A notice will be deemed to be given:

if posted:

1. within Australia to an Australian postal address, 5 Business Days after the date of posting; or
2. outside of Australia to an Australian postal address or within Australia to an address outside of Australia, 10 Business Days after posting;

if delivered by hand during a Business Day – on the date of delivery;

if emailed – on the date of the email, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered,

except that a delivery by hand or email received after 5.00pm (local time of the receiving Party) will be deemed to be given on the next Business Day.

# Definitions and interpretation

* 1. **Definitions**

**Business Day** means between 9.00am and 5.00pm on a day other than a Saturday, Sunday or public holiday at the Customer’s address.

**Contract** means the agreement between the Customer and the Supplier described in the ‘General information’ details above.

**Customer** is specified in the ‘General information’ details above.

**Deed** means this document titled *‘SOA Schedule 7 – Performance Guarantee’*.

**Guarantor** is specified in the ‘General information’ details above.

**SOA Comprehensive Contract Conditions - ICT Products and/or Services** means the document titled ‘*SOA* *Comprehensive Contract Conditions – ICT Products and/or Services’*.

**Supplier** is specified in the ‘General information’ details above.

* 1. **Interpretation**

Unless it is expressly stated that a different rule of interpretation will apply:

* + 1. (**agreement**) a reference to an agreement includes any variation or replacement of the agreement;
    2. (**Business Day**) if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
    3. (**currency**) all currency amounts are in Australian dollars;
    4. (**headings**) headings are provided for convenience and do not affect the interpretation of this Deed;
    5. (**includes**) “include”, “includes” and “including” must be read as if followed by the words “without limitation”;
    6. (**corresponding meaning**) if a word or phrase is defined its other grammatical forms have corresponding meanings;
    7. (**joint and several**) agreements, representations and warranties made by two or more people will bind them jointly and severally;
    8. (**law**) a reference to any legislation includes any consolidation, amendment, re-enactment or replacement of legislation;
    9. (**person**) a person includes the person’s executors, administrators, novatees and assignees; and
    10. (**construction**) no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it.

# Execution of Performance Guarantee

|  |  |  |  |
| --- | --- | --- | --- |
| |  |  |  | | --- | --- | --- | | Date ……………………………………..  **SIGNED, SEALED AND DELIVERED as a deed by**:  **<<insert name of Customer>>**  by    Name of Customer representative  In the presence of:    Name of witness | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | Signature of Customer representative    Signature of witness | |
| |  |  |  | | --- | --- | --- | | **EXECUTED as a deed by**:      **<<insert name of Guarantor>>**  in accordance with s.127 of the *Corporations Act 2001* (Cth)    Name of Director    Name of Director/Secretary | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | Signature of Director    Signature of Director/Secretary | |

Where an attorney executes this Deed on behalf of a Guarantor, the form of execution must indicate the source of this authority and a power of attorney and a certified copy provided to the Customer.