

## DEED OF GUARANTEE – PARENT COMPANY’S GUARANTEE OF PERFORMANCE BY CONTRACTOR OF A PARTICULAR CONTRACT (LIMITED)

**THIS DEED** is made this <<Insert day>> of <<Insert Month>> of <<Insert Year>>

### BETWEEN

<<Insert name of Parent Company>> a company incorporated in England & Wales under number <<Insert number>> whose registered office address is at <<Insert address>> and its successors and assigns (“the Guarantor”)

### AND

<<Insert name of client or customer of the Contractor>> [of <<Insert client or customer's principal business address>>] **OR** [a company incorporated in England & Wales under number <<Insert number>> whose registered office address is at <<Insert client or customer's registered office address>>] and its successors and assigns (“the Beneficiary”)

### AND

<<Insert Contractor's name>> a company incorporated in England & Wales under number <<Insert number>> whose registered office address is at <<Insert address>> and its successors and assigns (“the Contractor”)

### RECITALS:

- A. The Guarantor is the parent company of the Contractor
- B. The Beneficiary and the Contractor are to enter into the Contract as defined below
- C. The Beneficiary requires, as a condition of it entering into the Contract, a performance guarantee and indemnity to be provided by the parent company of the Contractor in respect of the Contract, and the Guarantor has agreed to provide such a guarantee of and indemnity for the Contractor’s performance and liabilities under the Contract

### THE PARTIES HEREBY AGREE as follows:-

#### 1. Definitions

“the Contract”	means an agreement (a draft copy of which is attached) to be entered into between the Contractor and the Beneficiary under which the Contractor is to [execute and complete [a project] [certain works] for] [provide certain [goods and][services] to] the Beneficiary
“the Guaranteed Obligations”	means all obligations of or owed by, the Contractor to the Beneficiary under the Contract not exceeding the Limit
“the Guaranteed Liabilities”	means all monies, debts and liabilities of any nature owed by the Contractor to the Beneficiary under the Contract or in respect of the Guaranteed Obligations not exceeding the Limit
“the Limit”	means the total sum in aggregate of £<<Insert maximum amount payable by Guarantor>> in respect of the Guarantor’s liabilities to the Beneficiary under Sub-Clauses 2.1.1 [and] 2.1.2 [and 2.1.3] of this Deed for the Guaranteed Obligations and the Guaranteed Liabilities provided always that the Limit shall not

include the interest claimable under Clause 2.2 of this Deed which interest shall be claimable in addition

## **2. Guarantee and Indemnity**

**2.1** In consideration of the Beneficiary entering into the Contract the Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary as a primary obligation and not merely as a surety that:

**2.1.1** the Contractor will duly and punctually perform all of the Guaranteed Obligations and the Guarantor will immediately upon first written demand of the Beneficiary pay to the Beneficiary the Guaranteed Liabilities as if the Guarantor were the principal obligor; and

**2.1.2** if the Contractor is in breach of the Guaranteed Obligations, the Guarantor will upon first written demand of the Beneficiary make good the breach at its own cost and expense

but the Guarantor shall not have any liabilities or obligations under Sub-Clauses 2.1.1 and 2.1.2 which in aggregate are any greater than those imposed on the Contractor under the Contract

**2.1.3** the Guarantor will upon first written demand of the Beneficiary indemnify and keep indemnified the Beneficiary in full against all costs, claims, liabilities and expenses (including legal expenses) suffered or incurred by the Beneficiary due to the Contractor's breach of any of the Guaranteed Obligations or any failure by the Contractor to duly and punctually perform all of the Guaranteed Obligations

The Guarantor's total liability in aggregate under Sub-Clauses 2.1.1 and 2.1.2 [and 2.1.3] shall not exceed the Limit

**2.2** The Guarantor shall pay interest on all sums demanded under this Deed from the date of demand until the actual date of payment (before as well as after judgment) at the rate of <<Insert percentage rate>> above the base rate of <<Insert name of bank>>, accruing on a daily basis and compounded on the last business day (on which bank are open for general business in London) of each month

**2.3** The obligations of the Guarantor under this Deed shall extend to, and the Guarantor consents to, any extension or variation of or amendment to the Contract and to any supplemental agreement between the Beneficiary and the Contractor

**2.4** In the event of default by the Contractor, the Beneficiary may enforce its rights against the Guarantor under this Agreement without first having to exhaust all of its remedies against the Contractor

**2.5** This Deed shall be additional to any other guarantee or security now or later held from the Guarantor in respect of the Guaranteed Obligations or the Guaranteed Liabilities, and shall not merge with or prejudice any other security or right or remedy and may be enforced notwithstanding the same

## **3. Commencement and Expiry**

**3.1** The obligations in this Deed shall commence on the Contractor and the Beneficiary entering into the Contract on or after the date set out above

**3.2** This Deed shall continue in force until the date when all of the Guaranteed Obligations have been performed by the Contractor or the date when all of the obligations in this Deed have been duly discharged, whichever is later, and

this Deed shall automatically terminate on such date

#### 4. Continuing Security etc.

This Deed is a guarantee and the Guaranteed Liabilities of the Contractor to the Beneficiary of payment in whole or part shall not be discharged or affected by,

4.1 the death, incapacity, receivership, reorganisation or style of the Guarantor

4.2 the grant by the Contractor of any time, indulgence, forbearance or concession or any arrangement made by the Beneficiary in respect of the Guaranteed Obligations or the Contractor

#### 5. Subrogation

5.1 At any time when the Contractor is liable for the performance of any of the Guaranteed Obligations and/or any default by the Guarantor in the performance of its obligations under this Deed, the Guarantor may only

5.1.1 of subrogation

5.1.2 to take the benefit of any security or other guarantee of the Contractor's obligations; or

5.1.3 to prove in the event of the insolvency of the Contractor, as permitted by the law applicable to the Deed as a result of the exercise of the right of set-off the same to the Beneficiary

5.2 The Guarantor hereby agrees to hold any amount recovered by it from the Contractor and any monies payable under this clause on trust for the Beneficiary

5.3 Following the taking of any security or any other compromise or any other compromise or any other compromise for the benefit of any creditor of the Contractor, the Guarantor shall not exercise any right or remedy that it may have against the Contractor in respect of any amount paid or other obligation performed by the Contractor

#### 6. Payments by Guarantor to Beneficiary

6.1 All payments to be made by the Guarantor to the Beneficiary under this Deed shall be made:

6.1.1 in full without deduction or withholding for or on account of any taxes

6.1.2 free and clear of any taxes, charges, deductions or withholding for or on account of any taxes

6.2 Any certificate given by the Guarantor to the Beneficiary stating the interest payable or the amount of the obligation shall, in the absence of manifest error, be binding for all purposes

of the Guaranteed Obligations shall remain in full force and effect and not be affected by the death, incapacity, receivership, reorganisation or style of the Guarantor shall not be affected by:

the death, incapacity, receivership, reorganisation or style of the Guarantor; or the change in the constitution, name or style of the Beneficiary; or

the grant by the Contractor of any time, indulgence, forbearance or concession or any arrangement made by the Beneficiary in respect of the Guaranteed Obligations or the Contractor

performance of any of the Guaranteed Obligations and/or any default by the Guarantor in the performance of its obligations under this Deed, the Guarantor may have:

to take the benefit of any security or other guarantee of the Contractor's obligations; or

to prove in the event of the insolvency of the Contractor, as permitted by the law applicable to the Deed as a result of the exercise of the right of set-off the same to the Beneficiary

it has not taken any security from the Contractor and any monies payable under this clause on trust for the Beneficiary

on with any voluntary arrangement or any other compromise for the benefit of any creditor of the Contractor, the Guarantor shall not exercise any right or remedy that it may have against the Contractor in respect of any amount paid or other obligation performed by the Contractor

under this Deed shall be made:

and

deduction or withholding for or on account of any taxes

the Beneficiary stating the interest payable or the amount of the obligation shall, in the absence of manifest error, be binding for all purposes



[signature of director/secretary] ...

Director/Secretary

**BENEFICIARY**

[<<Insert name of Beneficiary>> L

acting by

<<Insert name of director of Bene

[signature of director] .....

.Director

<<Insert name of director or secre

[signature of director/secretary] ...

Director/Secretary]

**OR**

[<<Insert name of Beneficiary if ar

[signature of Beneficiary] .....

In the presence of

<<Insert name & address of witne

Occupation: .....

[signature of witness] .....

.]

**CONTRACTOR**

<<Insert name of Contractor>> Lir

acting by

<<Insert name of director of Contr

[signature of director] .....

Director

<<Insert name of director or secre

[signature of director/secretary] ...

Director/Secretary