

Parent Company Guarantee

DATED _____ **[]**

GUARANTOR (1)

and

BENEFICIARY (2)

PARENT COMPANY GUARANTEE

in relation to the development of

[INSERT]

THIS **GUARANTEE** is made on

[]

BETWEEN:

- (1) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (“**Guarantor**”);
- (2) **[FULL COMPANY NAME]** whose principal address is at **[PLEASE INSERT ADDRESS]** (“**Beneficiary**”).

WHEREAS:

- (A) The Beneficiary has entered into the Contract with the Contractor.
- (B) The Beneficiary requires the Contractor to provide a guarantee, substantially in the form of this Guarantee, to the Beneficiary.
- (C) The Guarantor has agreed to guarantee the due performance of the Contract by the Contractor.
- (D) It is the intention of the parties that this document be executed as a deed.

IT IS AGREED:

1 Definitions and interpretation

1.1 The following definitions apply in this Guarantee:

- 1.1.1 “**Business Day**” means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
- 1.1.2 “**Contract**” means an agreement dated **[DATE]** between the Beneficiary and the Contractor including all amendments to variations of or supplements to it from time to time in force; and
- 1.1.3 “**Contractor**” means **[INSERT NAME]**.

1.2 Unless the context otherwise requires:

- 1.2.1 clause headings shall not affect the interpretation of this Guarantee;
- 1.2.2 a “**person**” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;
- 1.2.3 words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to any party shall include that party’s personal representatives, successors and permitted assigns;

- 1.2.6 any obligation on a party not to do something includes an obligation not to agree to that thing being done;
- 1.2.7 a reference to “**writing**” or “**written**” includes fax;
- 1.2.8 a reference to this Guarantee or to any other deed, agreement or document referred to in this Guarantee is a reference to this Guarantee, such other deed, agreement or document as varied or novated (in each case, other than in breach of the provisions of this Guarantee) from time to time; and
- 1.2.9 any words following the terms “including”, “include”, in particular, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Guarantee and Indemnity

- 2.1 The Guarantor as primary obligor guarantees to the Beneficiary the due and punctual observance and performance by the Contractor of each and all of the obligations, representations, warranties, duties and undertakings of the Contractor under and/or pursuant to the Contract.
- 2.2 If the Contractor fails to observe or perform any of its obligations, representations, warranties, duties and undertakings under and/or pursuant to the Contract or if the Beneficiary terminates the Contractor’s employment under clause 8.5.1 of the Contract, the Guarantor shall, as a separate and independent obligation, indemnify the Beneficiary against, and pay on demand, all loss, debt, damage, interest, cost and expense which the Beneficiary may incur by reason of such failure and/or termination provided that the Guarantor’s liability shall be no greater than the Contractor’s liability under and/or pursuant to the Contract.
- 2.3 The Guarantor shall, as a separate and independent obligation, indemnify the Beneficiary against, and pay on demand, all loss, debt, damage, interest, cost and expense which the Beneficiary may incur if any obligation guaranteed by the Guarantor is or becomes totally or partially unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor’s liability shall be no greater than the Contractor’s liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3 Beneficiary’s protections

- 3.1 The Guarantor agrees that it shall not in any way be released from liability under this Guarantee by any act, omission, matter or other thing whereby, in absence of this provision, the Guarantor would or might be released in whole or in part from liability under this Guarantee including, without limitation and whether or not known to the Guarantor:
 - 3.1.1 any arrangement made between the Contractor and the Beneficiary;
 - 3.1.2 any alteration in the obligations undertaken by the Contractor whether by way of any modification, amendment, supplement or variation referred to in clause 6 or otherwise;

- 3.1.3 any indulgence, waiver, consent or forbearance by the Beneficiary whether as to payment, time, performance or otherwise;
- 3.1.4 any additional or advanced payment to the Contractor;
- 3.1.5 any compromise of any dispute with the Contractor;
- 3.1.6 any failure of supervision to detect or prevent any fault of the Contractor;
- 3.1.7 any assignment of the benefit of the Contract;
- 3.1.8 the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Contractor or any other person;
- 3.1.9 any unenforceability, illegality or invalidity of any of the provisions of the Contract or any of the Contractor's obligations under the Contract, so that this Guarantee shall be construed as if there were no such unenforceability, illegality or invalidity;
- 3.1.10 any legal limitation, disability, incapacity or other circumstances relating to the Contractor, or any other person; and/or
- 3.1.11 the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Contractor or any other person.

4 Limitation

- 4.1 The Beneficiary may not start proceedings against the Guarantor under this Guarantee in respect of any claim if any proceedings against the Contractor in respect of that claim would be statute-barred.

5 Conclusive liability and extent of liability

- 5.1 For the purposes of this Guarantee, any judgment, award (whether interim or final) or adjudicator's decision against the Contractor in favour of the Beneficiary under or in connection with the Contract shall be conclusive evidence of any liability of the Contractor to which that judgment, award or decision relates.

6 Changes to the Contract

- 6.1 The Guarantor authorises the Contractor and the Beneficiary to make any modification, amendment, supplement or variation to the Contract, the due and punctual observance and performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with this Guarantee.

7 No obligation to pursue the Contractor

- 7.1 The Beneficiary shall not be obliged, before enforcing this Guarantee, to take any action in any court or arbitral proceedings against the Contractor, to make any claim against or any demand of the Contractor, to enforce any other security held by it in respect of the obligations of the Contractor under the Contract or to exercise, levy or enforce any distress, diligence or other process of execution against the Contractor.

8 Continuing Guarantee

- 8.1 This Guarantee is a continuing guarantee and shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Contractor, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Contract have been satisfied or performed in full and is not revocable.

9 Security and Subrogation

- 9.1 Until all amounts which may be or become payable under the Contract or this Guarantee have been irrevocably paid in full, the Guarantor shall not as a result of this Guarantee or any payment or performance under this Guarantee be subrogated to any right or security of the Beneficiary or claim or prove in competition with the Beneficiary against the Contractor or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Beneficiary.
- 9.2 The Guarantor shall not hold any security from the Contractor in respect of this Guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Beneficiary.
- 9.3 Until all amounts which may be or become payable under the Contract or this Guarantee have been irrevocably paid in full, if (notwithstanding the provisions of clause 9.1 and clause 9.2) the Guarantor has any rights of subrogation against the Contractor or any rights to prove in a liquidation of the Contractor, the Guarantor agrees to exercise such rights in accordance with the directions of the Beneficiary.

10 Payment and expenses

- 10.1 Each payment to be made by the Guarantor under this Guarantee shall be made in pounds sterling, free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 If the Guarantor fails to make any payment due to the Beneficiary under this Guarantee by the due date for payment, then the Guarantor shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of Barclays Bank plc from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Guarantor shall pay the interest together with the overdue amount.
- 10.3 The Guarantor shall reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the preservation, exercise or enforcement of any rights under or in connection with this Guarantee.
- 10.4 Each party shall pay its own costs incurred in connection with the negotiation, preparation and execution of this Guarantee.

11 Warranties

11.1 The Guarantor warrants and confirms to the Beneficiary:

11.1.1 that it is duly incorporated with limited liability and validly existing under the law of England and Wales; and

11.1.2 its obligations under this Guarantee are legal, valid, binding and enforceable in accordance with its terms.

12 Assignment

12.1 The Beneficiary may without the consent of the Guarantor assign or charge the benefit of this Guarantee at any time to any person to whom the benefit of the Contract has been or will be validly assigned or charged and any such assignment or charge shall not release the Guarantor from liability under this Guarantee.

12.2 The Beneficiary shall notify the Guarantor of any such assignment or charge. If the Beneficiary fails to do so, the assignment or charge will still be valid.

12.3 The Guarantor shall not contend that any person to whom the benefit of this Guarantee is assigned or charged under clause 12.1 may not recover any sum under this Guarantee because that person is an assignee or chargee and not a named party to this Guarantee.

12.4 The Guarantor may not assign or charge the benefit of this Guarantee without the Beneficiary's written consent.

13 Notices

13.1 Any notice or other communication given to a party under or in connection with this Guarantee shall be in writing and shall be:

13.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

13.1.2 sent by fax to its main fax number.

13.2 Any notice or communication shall be deemed to have been received:

13.2.1 if delivered by hand, on signature of a delivery receipt;

13.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting; or

13.2.3 if sent by fax, at 9.00 am on the next working day after transmission.

13.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14 Waiver

- 14.1 No delay or omission of the Beneficiary in exercising any right, power or privilege under this Guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Beneficiary provided for in this Guarantee are cumulative and not exclusive of any rights or remedies provided by law.
- 14.2 A waiver given or consent granted by the Beneficiary under this Guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given and shall not prevent the Beneficiary from subsequently enforcing any of the provisions of this Guarantee.

15 Severance

- 15.1 If any provision or part-provision of this Guarantee is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Guarantee.
- 15.2 If any provision or part-provision of this Guarantee is found to be invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

16 Third party rights

- 16.1 Except for any person to whom the benefit of this Guarantee is assigned or charged in accordance with clause 12.1, a person who is not a party to this Guarantee shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Guarantee.

17 Counterparts

- 17.1 This Guarantee may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one deed.

18 Entire agreement

- 18.1 This Guarantee constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.2 The parties shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Guarantee.

19 Governing law and jurisdiction

- 19.1 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.
- 19.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Guarantee or its subject matter or formation (including non-contractual disputes or claims).
- 19.3 [The Guarantor irrevocably appoints [NAME] of [ADDRESS] [FAX NUMBER] as its agent to receive on its behalf in England or Wales service of any proceedings under this Guarantee. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Guarantor) and shall be valid until such time as the Beneficiary has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Guarantor shall forthwith appoint a substitute acceptable to the Beneficiary and deliver to the Beneficiary the new agent's name and address [and fax number] within England and Wales.]¹
- 19.4 [The Guarantor irrevocably consents to any process in any legal action or proceedings under this Guarantee being served on it in accordance with the provisions of this Guarantee relating to service of notices of claims. Nothing contained in this Guarantee shall affect the right to serve process in any other manner permitted by law.]²

20 Execution as a deed

- 20.1 This instrument is executed as a deed and was delivered when it was first dated.

The common seal of the **[COMPANY NAME]**)
was affixed to this deed in the presence of:)

.....
Chairman of the Board of Governors/Vice
Chairman of the Board

.....
Member of the Board of Governors

[BENEFICIARY EITHER]

Signed as a deed by [INSERT NAME OF)
BENEFICIARY] acting by:)

.....

¹ Use this clause if the guarantor is out of the jurisdiction. Delete if the guarantor is in England and Wales.

² Use this clause if the guarantor is out of the jurisdiction. Delete if the guarantor is in England and Wales.

Director's name

Director's signature

.....

.....

Director's[/Secretary's] name

Director's[/Secretary's] signature

[OR]

Signed as a deed by [INSERT NAME OF)
BENEFICIARY] acting by a director in the)
presence of:)

.....

Director's signature

.....

Director's name

Witness' signature

.....

Witness' name

.....

Witness' address

.....

.....

.....

Witness' occupation

.....

[GUARANTOR EITHER]

Signed as a deed by [INSERT NAME OF)
GUARANTOR] acting by:)

.....

.....

Director's name

Director's signature

.....

.....

Director's[/Secretary's] name

Director's[/Secretary's] signature

[OR]

Signed as a deed by [INSERT NAME OF)
GUARANTOR] acting by a director in the)
presence of:)

.....

Director's signature

.....

Director's name

Witness' signature

.....

Witness' name

.....

Witness' address

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Witness' occupation

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