**PARENT COMPANY GUARANTEE**

**between**

[\*\*insert]

and

[\*\*insert]

**[\*\*insert CMS#]**

**CONTENTS**

[1. DEFINITIONS AND INTERPRETATION 3](#_Toc456104649)

[2. GUARANTEE AND INDEMNITY 3](#_Toc456104650)

[3. NO RELEASE OF LIABILITY 4](#_Toc456104651)

[4. CONTINUING GUARANTEE 5](#_Toc456104652)

[5. DEALINGS WITH CONTRACTOR 5](#_Toc456104653)

[6. PAYMENT 5](#_Toc456104654)

[7. GUARANTOR NO COMPETITION WITH COMPANY 5](#_Toc456104655)

[8. NOTICES 6](#_Toc456104656)

[9. CONDITIONAL DISCHARGE 6](#_Toc456104657)

[10. GOVERNING LAW AND DISPUTE RESOLUTION 6](#_Toc456104658)

[11. ASSIGNMENT 6](#_Toc456104659)

[12. PROPERTY 6](#_Toc456104660)

[13. THIRD PARTY RIGHTS 7](#_Toc456104661)

**THIS GUARANTEE IS MADE AS A DEED AND IS DATED [\*\*insert date]**

**BETWEEN**

[\*\*COMPANY],

whose registered office is at [\*\*, (\*\*) \*\*, \*\*] (“COMPANY”),

and

[\*\*CONTRACTOR’S PARENT COMPANY OR AFFILIATE AS APPROPRIATE],

whose registered office is at [\*\*, (\*\*) \*\*, \*\*] (“GUARANTOR”).

**RECITALS**

A. [CONTRACTOR NAME], (the **“CONTRACTOR”**) is entering into or has entered into the CONTRACT with the COMPANY concerning […include short description of the SCOPE…].

B. The GUARANTOR is an AFFILIATE of the CONTRACTOR.

C. The CONTRACTOR has requested that the GUARANTOR provide this PARENT COMPANY GUARANTEE in favour of the COMPANY in connection with the CONTRACTOR’s obligations under the CONTRACT.

**THE PARTIES AGREE AS FOLLOWS**

# DEFINITIONS AND INTERPRETATION

Capitalised terms used and not otherwise defined in this GUARANTEE have the meanings given to them in the CONTRACT.

|  |  |
| --- | --- |
| **CONTRACT** | the [\*\*complete name of the related agreement] dated [\*\*date of agreement] identified by agreement number [\*\*insert CMS#], including amendments. |
| **CONTRACTOR** | the party, together with COMPANY, to the CONTRACT. |
| **GUARANTEE** | this document and its related undertakings agreed between the parties. |
| **OBLIGATIONS** | all obligations, duties, undertakings, and covenants of CONTRACTOR under the CONTRACT, whether arising before, on, or after the date of this GUARANTEE, including any obligations of CONTRACTOR that may survive termination of the CONTRACT. |

# GUARANTEE AND INDEMNITY

## Undertaking

GUARANTOR:

#### unconditionally and irrevocably guarantees to and for the benefit of COMPANY that CONTRACTOR will perform and observe the OBLIGATIONS, and comply with the terms and conditions, of the CONTRACT in all respects as if GUARANTOR were the sole principal obligor and not merely GUARANTOR. All payments by the GUARANTOR must be made within ten (14) days of receiving such written demand in accordance Article 6(a) of this GUARANTEE; and

#### As a separate, original and independent obligation under this GUARANTEE, the GUARANTOR irrevocably and unconditionally agrees to INDEMNIFY COMPANY GROUP in full on demand against all LIABILITIES suffered or incurred by COMPANY GROUP in respect of:

##### any failure by CONTRACTOR to perform or comply with any OBLIGATIONS; or

##### any of the guaranteed OBLIGATIONS being or becoming void, invalid or otherwise unenforceable.

# NO RELEASE OF LIABILITY

### As between GUARANTOR and COMPANY (but without affecting any obligations of CONTRACTOR), GUARANTOR remains liable under this GUARANTEE as sole primary obligor and not merely as a surety.

### The obligations and liabilities of the GUARANTOR under this PARENT COMPANY GUARANTEE will be absolute and unconditional and will remain in full force and effect until all of the guaranteed OBLIGATIONS have been performed in their entirety. Except as specifically otherwise provided in this GUARANTEE, the GUARANTOR will not be released or discharged from any of its obligations and liabilities under this GUARANTEE, and such obligations and liabilities will not be discharged, waived, modified, impaired, prejudiced or otherwise affected upon the happening from time to time of any event or circumstance, including without limitation any of the following, whether or not with notice to, or with the consent of, the GUARANTOR:

#### any time, indulgence, waiver, or consent given to CONTRACTOR or any other PERSON;

#### any amendment to or variation of SCOPE in the CONTRACT or to any security or other guarantee or indemnity;

#### the making or absence of any demand on CONTRACTOR or any other PERSON for payment;

#### the enforcement or absence of enforcement of CONTRACT or of any security, right of action, or other guarantee, or indemnity;

#### the release of any such security, right of action, guarantee, or indemnity;

#### any INSOLVENCY EVENT, liquidation, dissolution, amalgamation, reconstruction, or reorganisation of CONTRACTOR or any other PERSON;

#### any change in the constitution, status, control or ownership of the CONTRACTOR;

#### the illegibility, invalidity, or unenforceability, or any defect in any provision of the CONTRACT or any of CONTRACTOR’s OBLIGATIONS;

#### any failure, defect, or unenforceability of any OBLIGATION or any term or condition of the CONTRACT;

#### any disability or incapacity of CONTRACTOR;

#### the fraud of CONTRACTOR;

#### the non-existence of any matter which GUARANTOR considers a condition precedent (and if any such matter is considered to be a condition precedent, it is expressly waived);

#### the lack of authority of any director of CONTRACTOR or of any other PERSON acting or purporting to act on behalf of CONTRACTOR with the express or implied authority of CONTRACTOR; or

#### any other act, event, or omission which might operate to discharge, impair, or otherwise affect any of GUARANTOR’S obligations or liabilities under this GUARANTEE or any rights, remedies or powers conferred on COMPANY under the CONTRACT.

### GUARANTOR waives any rights to require COMPANY, before proceeding against GUARANTOR, to pursue first any remedy which COMPANY may have against CONTRACTOR.

### GUARANTOR covenants with COMPANY that if CONTRACTOR should go into liquidation, due to an INSOLVENCY EVENT or other reason, and the liquidators disclaim the CONTRACT, then the liability of the GUARANTOR under this GUARANTEE remains in full effect.

# CONTINUING GUARANTEE

This GUARANTEE is a continuing security and is not discharged by the performance of any particular OBLIGATION and remains in full effect until all OBLIGATIONS are performed in full.

# DEALINGS WITH CONTRACTOR

Before enforcing this GUARANTEE in respect of any OBLIGATION, COMPANY will demand performance by CONTRACTOR. But COMPANY is not obliged to seek to enforce any remedy it may have under the CONTRACT or at law, initiate any legal proceedings, obtain any judgment, or make or file any claim in the bankruptcy, dissolution, or winding up of CONTRACTOR (or equivalent proceedings in any other jurisdiction). COMPANY need not advise GUARANTOR of its dealings with CONTRACTOR nor of any failure by CONTRACTOR to perform any OBLIGATION or comply with any term or condition of the CONTRACT.

# PAYMENT

### All payments by GUARANTOR under this GUARANTEE must be made within ten days from receipt by GUARANTOR of COMPANY’s demand in accordance with the instructions of COMPANY.

### If as a result of the different tax residencies or domiciles of GUARANTOR and CONTRACTOR, GUARANTOR is obliged by law to make any such deduction, the amount due from GUARANTOR will be increased to the extent necessary to ensure that, after the making of the deduction, COMPANY receives a net amount equal to the amount it would have received had no deduction been required to be made.

### All payments must be made in the currency applicable to the CONTRACT. If any sum is paid by GUARANTOR in a currency other than that in which the OBLIGATIONS are payable, GUARANTOR agrees to INDEMNIFY COMPANY for all LIABILITIES arising from the conversion by COMPANY of the currency into the currency applicable to the CONTRACT.

### GUARANTOR will bear any and all costs and expenses incurred by COMPANY in recovering any sums due from GUARANTOR under this GUARANTEE.

# GUARANTOR NO COMPETITION WITH COMPANY

The following provision apply so long as any of the OBLIGATIONS remain outstanding:

#### Whether by payment of any sum due under this GUARANTEE or by any other means, GUARANTOR will not:

##### claim or recover by the institution of proceedings, the threat of proceedings, or otherwise such sum from CONTRACTOR;

##### claim any set-off or counterclaim against CONTRACTOR;

##### prove in competition with COMPANY in respect of any payment by GUARANTOR;

##### claim or have the benefit of any security which COMPANY holds or may hold for any money or LIABILITIES due from or incurred by CONTRACTOR to COMPANY, or hold any security from CONTRACTOR without the prior written consent of COMPANY.

#### If GUARANTOR holds any security in breach of this sub-article, or receives any sums from CONTRACTOR in respect of any payment of GUARANTOR under this GUARANTEE, GUARANTOR will hold the security or monies in trust for COMPANY so long as any sums are payable (contingently or otherwise) under this GUARANTEE.

# NOTICES

Notices under the GUARANTEE must be made in the manner set out in the GENERAL TERMS AND CONDITIONS of the CONTRACT and delivered:

### To COMPANY:

[\*\*include details]

### To CONTRACTOR:

[\*\*include details]

# CONDITIONAL DISCHARGE

Any release, discharge, or settlement between GUARANTOR and COMPANY is conditional upon no security, disposition, or payment to COMPANY by CONTRACTOR or any other PERSON in respect of the OBLIGATIONS being void, set aside, or ordered to be refunded under APPLICABLE LAW in relation to bankruptcy, liquidation, or insolvency (or its equivalent in any relevant jurisdiction) or other reason. If any condition is not fulfilled, COMPANY is entitled to enforce this GUARANTEE and recover immediately any value or amount due as if the release, discharge, or settlement had not occurred and payment had not been made.

# Representations and warranties

### On the COMMENCEMENT DATE the GUARANTOR hereby represents and warrants to each BENEFICIARY that:

#### the GUARANTOR is a company incorporated and validly existing under the laws of **[…]** and possesses the capacity to sue and be sued in its own name and has the power to carry on its business and to own its property and other assets;

#### the GUARANTOR has full corporate power and authority to execute, deliver and perform its obligations under this GUARANTEE and to carry out and consummate the transactions contemplated under it and all necessary corporate and other action has been taken to authorise the execution, delivery and performance of the same;

#### the obligations of the GUARANTOR under this GUARANTEE constitute its legal, valid and binding obligations and are in full force and effect in accordance with their terms;

#### the execution, delivery and performance by the GUARANTOR of this GUARANTEE and the consummation of the transactions contemplated herein does not and will not:

##### contravene any APPLICABLE LAW or any judgment, order or decree or any court having jurisdiction over the GUARANTOR;

##### conflict with or result in a breach of any of the terms of, or constitute a default under, any agreement or other instrument to which the GUARANTOR is a party or any licence or other authorisation to which the GUARANTOR is subject; or

##### contravene the provisions of the GUARANTOR’s certificate of incorporation, memorandum and articles of association, constitution or other such equivalent constitutional documents under its jurisdiction of incorporation; and

#### in the group of companies including the CONTRACTOR, the GUARANTOR is an AFFILIATE of the CONTRACTOR.

### The GUARANTOR repeats each of the above representations and warranties on each day that this GUARANTEE remains in force.

# Financial condition of the CONTRACTOR

The GUARANTOR assumes sole responsibility for being and remaining informed of the financial condition of the CONTRACTOR and of all other circumstances bearing upon the risk of non-payment by the CONTRACTOR of amounts owing under the CONTRACT and agrees that the COMPANY does not and will not have a duty to advise the GUARANTOR of information known to it regarding such condition or any such circumstances.

# Effect of proceedings against the CONTRACTOR

Any resolution of disputes against the CONTRACTOR in accordance with the CONTRACT will be binding on the GUARANTOR (whether or not the GUARANTOR was party to such resolution) and the GUARANTOR hereby irrevocably waives any and all defences to performance or payment under this GUARANTEE which have not been raised and resolved under the CONTRACT.

# GOVERNING LAW AND DISPUTE RESOLUTION

### This GUARANTEE and any dispute or claim arising out of or in connection with it, whether in tort, contract, under statute, or otherwise, including any question regarding its existence, validity, interpretation, breach, or termination will be construed in accordance with the laws of England and Wales.

### Any dispute or claim arising out of or in connection with this GUARANTEE or its subject matter or formation, whether in tort, contract, under statute, or otherwise, including any question regarding its existence, validity, interpretation, breach, or termination, and including any non-contractual claim will ultimately be referred to, and resolved by litigation, and the parties submit to the exclusive jurisdiction of the English courts.

### GUARANTOR agrees that any final and binding award rendered against COMPANY resulting from the dispute resolution arrangement under the CONTRACT (or, if applicable another dispute resolution procedure followed by CONTRACTOR and COMPANY) is conclusive and binding on GUARANTOR for the purposes of determining its obligations under this GUARANTEE to the same extent that the award is binding on CONTRACTOR.

# Invalidity

If at any time any phrase, sentence, clause, section or provision (“**PROVISION**”) of this GUARANTEE is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither:

### the legality, validity or enforceability in that jurisdiction of any other PROVISION of this GUARANTEE; nor

### the legality, validity or enforceability under the law of any other jurisdiction of that or any other PROVISION of this GUARANTEE,

will be affected or impaired.

# Further assurances

The GUARANTOR agrees to execute and deliver to the COMPANY from time to time, upon the BENEFICIARY’S written request, any additional instruments or documents reasonably considered necessary by the COMPANY to cause this GUARANTEE to be, become or remain valid and effective in accordance with its terms.

# ASSIGNMENT

GUARANTOR will not assign, subcontract, or otherwise transfer any of its rights or obligations under this GUARANTEE without COMPANY’s prior written consent.

# PROPERTY

This GUARANTEE is the property of COMPANY, and COMPANY is under no obligation to return it to GUARANTOR at any time.

# THIRD PARTY RIGHTS

Members of COMPANY GROUP who are not a party to the GUARANTEE, but who have benefits conferred on them by it, are entitled to enforce those benefits. Otherwise, no term of this GUARANTEE will be enforceable by any PERSON who is not a party to the GUARANTEE. The parties may amend or terminate the GUARANTEE without notice to or consent of any PERSON not a party, but conferred benefits, even if rights to enforce a benefit conferred by the GUARANTEE may be varied or extinguished.

**Signatories**

**SIGNED AS A DEED:**

|  |  |
| --- | --- |
| **For and on behalf of [\*\*insert full COMPANY name]**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Position: | **For and on behalf of [\*\*insert full CONTRACTOR name]**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Position: |
| In the presence of  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: | In the presence of  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: |