

**GUARANTEE**



by

[ ] **LIMITED**

in favour of

[ ] **LIMITED**

**Property:** [ ]



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## GUARANTEE

by

[ ] **LIMITED**, incorporated under the Companies Acts (Registered Number [ ]), and having its Registered Office at [ ] ("Guarantor");

in favour of

[ ] **LIMITED**, incorporated under the Companies Acts (Registered Number [ ]), and having its Registered Office at [ ], and includes where the context so requires its successors as landlord under the Lease ("Landlord")

### WHEREAS:

- (A) The Landlord is the landlord under the Lease;
- (B) The Tenant is the tenant under the Lease; and
- (C) The Guarantor has agreed to guarantee the obligations of the Tenant under the Lease.

The Parties agree as follows:

#### 1. Definitions and Interpretation

##### 1.1 Definitions

In this Guarantee:

**"Business Day"** means a day on which clearing banks in [Edinburgh, Glasgow and London] are open for normal business;

**"Guaranteed Obligations"** means all past, present, future and contingent obligations of the Tenant:

- (a) to pay all rents and other sums; and
- (b) to perform and fulfil all other obligations

which are now or may at any time in the future become due by the Tenant to the Landlord in terms of the Lease;

**"Interest"** means interest at [three] per cent above the base rate for the time being in force of [*Insert name of bank*] (or any other UK clearing bank specified by the Landlord) on the sum in question if not paid on or by the due date (or, if no date is specified, not paid within 10 Business Days after the date of demand) and will be payable for the period starting on the due date (or date of demand) and ending on the date of payment;

**"Lease"** means the lease between [ ] and [ ] dated [ ] and [ ] and [about to be] registered in the Books of Council and Session on [ ] [and also recorded in the Division of the General Register of Sasines for the County of [ ]], the Tenant's right to which is registered in the Land Register of Scotland under Title Number [ ];

**"Parties"** means the Guarantor and the Landlord;

**"Property"** means [ ] being the subjects more particularly described in the Lease;

**"Relevant Event"** means any of the following events or circumstances:

- (a) the Tenant going into liquidation, including provisional liquidation or a petition being presented or resolution proposed or passed for its liquidation;
- (b) the Tenant having a receiver appointed in respect of any part of its undertaking or assets;
- (c) [the Tenant (not being a corporate body) having its estates sequestrated or becoming insolvent or apparently insolvent or signing a trust deed for creditors or effecting or proposing any general composition with its creditors;]
- (d) the Tenant being dissolved, struck off or otherwise ceasing to exist;
- (e) the Landlord serving notice on the Tenant that an event has occurred which entitles the Landlord to irritate the Lease;
- (f) the Lease being terminated by reason of irritancy;
- (g) the Tenant having an administrator appointed or a petition being presented for the appointment of an administrator or notice of intention to appoint an administrator being given;
- (h) the Tenant commencing negotiations in relation to, entering into proposing or making, instituting or giving notice of or indicating an intention to institute a voluntary arrangement or composition in respect of its debts (or any class of them) or affairs including a company voluntary arrangement, a scheme of arrangement or restructuring plan, or any court order is made or meeting is held in relation to any such arrangement or composition, or approval of any of such arrangement or composition takes effect;
- (i) a moratorium procedure is commenced or steps are taken to obtain a moratorium (including a moratorium in terms of Part A1 of the Insolvency Act 1986), or any other proceedings for the benefit of the Tenant's creditors are commenced under any law, regulation or procedure relating to the reconstruction or readjustment of debt;
- (j) the Tenant becoming unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (k) the Tenant enters into a compromise or arrangement under Part 26 or Part 26A of the Companies Act 2006 or Part I of the Insolvency Act 1986; or
- (l) an event occurs in any jurisdiction in relation to the Tenant which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (a) to (k) of this definition; and

**"Tenant"** means [[      ]] Limited, incorporated under the Companies Acts (Registered Number [      ]) and having its Registered Office at [      ]] [[      ]] residing at [      ]].

## 1.2 Interpretation

In this Guarantee, unless otherwise specified or the context otherwise requires:

- 1.2.1 any reference to one gender includes all other genders;
- 1.2.2 words in the singular only include the plural and *vice versa*;
- 1.2.3 any reference to the whole is to be treated as including reference to any part of the whole;

- 1.2.4 any reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) [and that person's personal representatives, successors or permitted assignees];
- 1.2.5 words importing individuals include corporations and *vice versa*;
- 1.2.6 any references to this Guarantee or to the Lease or to any other document are references to this Guarantee, the Lease or to that other document as varied, supplemented, assigned, novated or replaced from time to time;
- 1.2.7 any reference to a Clause is to the relevant clause of this Guarantee;
- 1.2.8 any reference to a statute or statutory provision includes any subordinate legislation which is in force from time to time under that statute or statutory provision;
- 1.2.9 any reference to any statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment;
- 1.2.10 any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words;
- 1.2.11 references to writing or written do not include [faxes or] e-mail; and
- 1.2.12 where at any one time there are two or more persons included in the expression "Guarantor" obligations contained in this Guarantee which are expressed to be made by the Guarantor are binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order.

### **1.3      Headings**

The headings in this Guarantee are included for convenience only and are to be ignored in construing this Guarantee.

### **1.4      Lease Definitions**

Unless the context otherwise requires, words and expressions which are defined in the Lease will bear the same meanings for the purposes of this Guarantee.

## **2.      Guarantee**

The Guarantor irrevocably and unconditionally guarantees to the Landlord full and punctual payment or performance by the Tenant of the Guaranteed Obligations as and when they fall due for payment or performance and failing such payment or performance by the Tenant the Guarantor will on demand by the Landlord make payment or effect performance of the Guaranteed Obligations in question together with:

- 2.1 all liabilities, losses, costs, damages and expenses incurred by the Landlord by reason of or in connection with any such failure together with Interest; and
- 2.2 all costs and expenses properly and reasonably incurred by the Landlord in connection with the enforcement of this Guarantee together with Interest.

## **3.      Primary Obligation**

The obligations of the Guarantor under this Guarantee will be independent primary obligations and not merely those of guarantor or cautioner and if any of the Guaranteed Obligations are not, or cease to be, valid and enforceable for any reason whatever (whether or not known to the Landlord) or for any reason are not recoverable from or capable of

performance by the Guarantor under Clause 2 the Guarantor will still be liable to the Landlord in respect of such Guaranteed Obligations as if they were fully valid and enforceable and/or recoverable or capable of performance and the Guarantor were principal debtor in place of the Tenant.

#### 4. **Indemnity**

- 4.1 The Guarantor undertakes to indemnify the Landlord on demand against all liabilities, losses, costs, damages and expenses which the Landlord may incur by reason of or in connection with any failure by the Tenant to make payment of or perform any of the Guaranteed Obligations as and when they fall due or as a result of any of the Guaranteed Obligations being or becoming void or unenforceable for any reason or the Guaranteed Obligations for any reason not being recoverable or capable of performance under Clause 2, together with Interest.
- 4.2 The Guarantor undertakes to indemnify the Landlord on demand against all liabilities, losses, costs, damages and expenses which the Landlord may incur by reason of or in connection with the Tenant proposing or entering into any company voluntary arrangement or other scheme or arrangement having or purporting to have the effect of impairing, compromising or releasing any or all of the Guarantor's obligations under this Guarantee.

#### 5. **Guarantor to take New Lease**

Without prejudice to any other provision of this Guarantee if a Relevant Event occurs, the Guarantor will accept, within [six] months after the Relevant Event, provided the Landlord serves notice on the Guarantor within the [six] month period, either:

- 5.1 a new lease of the Property for a period equal to the residue of the term of the Lease which would have remained if the Relevant Event had not occurred, at the same rent and on the same terms as the Lease commencing on the date of the Relevant Event, except that any works carried out by or on behalf of the Tenant (or its predecessor as tenant under the Lease) will be treated by reference to the date of entry under the Lease and not the date of the Relevant Event; or
- 5.2 an assignation to the Guarantor of the Tenant's interest under the Lease, effective from the date of the Relevant Event.

#### 6. **Duration**

This Guarantee will be a continuing security notwithstanding any intermediate payment or performance and will remain in force so long as any liability (including any future or contingent liability):

- 6.1 on the part of the Tenant under the Lease, or
- 6.2 on the part of the Guarantor under this Guarantee

remains unfulfilled unless discharged by the Landlord in accordance with Clause 8.

#### 7. **Non-impairment**

This Guarantee will not be discharged or prejudiced by:

- 7.1 the Landlord holding, acquiring, failing to perfect, releasing or giving up any obligation, security or remedy (present or future) for the obligations of the Tenant under the Lease or any neglect, delay or forbearance on the part of the Landlord in enforcing such obligation, security or remedy;
- 7.2 the Landlord giving time or any other indulgence to the Tenant;
- 7.3 any variation, amendment, supplement or extension whether formal or informal, of the terms of the Lease or the implementation of any rent review provisions in the Lease;

- 7.4 the Landlord irritating the Lease;
- 7.5 the Landlord releasing any person comprised in the Tenant from liability under the Lease, or
- 7.6 any other act, omission or event whereby (but for this Clause) the Guarantor would be discharged in whole or in part from this Guarantee.

## 8. **Discharge**

If the Tenant assigns its interest under the Lease in accordance with the terms of the Lease, or the Landlord accepts a renunciation of the Tenant's right to the Lease, the Landlord will at the request and cost of the Guarantor grant a valid discharge of this Guarantee as at the date of valid intimation of such assignation or the effective date of such renunciation (as the case may be) provided that there are no outstanding claims under the Guarantee, or if there are any such claims, upon such claims being satisfied in full.

## 9. **Assignment**

- 9.1 The Landlord has the right to assign or transfer this Guarantee to its successors as landlord under the Lease without the consent of the Guarantor.
- 9.2 The Guarantor does not have the right to assign or transfer its rights or obligations under this Guarantee.

## 10. **Postponement of Claims by Guarantor**

- 10.1 Until the Guaranteed Obligations have been fully and unconditionally paid or performed, the Guarantor will not be entitled to share any security held or money received by the Landlord on account of the Guaranteed Obligations.
- 10.2 Until the Guaranteed Obligations have been fully and unconditionally paid or performed, the Guarantor waives its rights of subrogation, reimbursement and indemnity against the Tenant and any other person and any other right they may have to stand in the place of the Landlord in respect of any security from or money payable by the Tenant or any other person.
- 10.3 Until the Guaranteed Obligations have been fully and unconditionally paid or performed, the Guarantor will have no recourse, nor be entitled to pursue any right or remedy, against the Tenant arising from the performance of any of the Guarantor's obligations under this Guarantee.
- 10.4 In the event of the liquidation, receivership, administration, sequestration or other insolvency or dissolution of the Tenant the Guaranteed Obligations will be deemed to continue to be due and outstanding until fully and unconditionally paid or performed. The Landlord will be entitled to claim in the liquidation, receivership, administration, sequestration or other insolvency of the Tenant for the full amount of the Guaranteed Obligations and to retain the whole of the dividends from such claim to the exclusion of any rights of the Guarantor as guarantor in competition with the Landlord until the Landlord's claim is satisfied in full.

## 11. **Exclusion of Set Off**

- 11.1 All payments due by the Guarantor under this Guarantee will be made without any retention, deduction, set-off or counterclaim and free from any deduction or withholding for or on account of any taxes or other charges in the nature of taxes imposed by any competent authority. If any such deduction or withholding is required by law the Guarantor will pay the Landlord such additional amount as may be necessary to ensure that the Landlord receives the full amount of the relevant payment as if such deduction or withholding had not been made.
- 11.2 The Guarantor will not be entitled to withhold or restrict performance of any obligation by it under this Guarantee by reason of any purported right or claim of retention, set off or counterclaim or for any other reason.

## 12. Certificate

A certificate signed by any authorised signatory on behalf of the Landlord will, except in the case of manifest error, conclusively constitute the amount of the Guaranteed Obligations or any sum due by the Guarantor under Clause 13 or any other provision of this Guarantee at the relevant time for all purposes of this Guarantee.

## 13. Costs

13.1 The Guarantor will pay to the Landlord within five Business Days after written demand:

- 13.1.1 the legal fees and expenses reasonably and properly incurred by the Landlord in connection with the preparation and execution of this Guarantee;
- 13.1.2 the costs of registering this Guarantee in the Books of Council and Session and of obtaining [an electronic extract][[two] extracts (one of which will be delivered to the Guarantor's solicitors)];
- 13.1.3 the legal fees and expenses reasonably and properly incurred by the Landlord in connection with the preparation and completion of any new lease or assignation entered into under the terms of Clause 5 including the registration dues on such new lease or assignation [and of obtaining [an electronic extract][[two] extracts (one of which will be delivered to the Guarantor's solicitors)]; and
- 13.1.4 all Value Added Tax on any of the fees, costs and expenses set out above.

13.2 If any amount specified in Clause 13.1 is not paid within [14] days after demand the Guarantor will pay Interest on such amounts.

13.3 The Guarantor will be responsible for any Land and Buildings Transaction Tax chargeable on any such new lease or assignation.

## 14. Notices

14.1 Any formal notice must be in writing and sent by pre-paid first class post or special delivery to or otherwise delivered to or left at the address of the recipient under Clause 14.2 or to any other address in the United Kingdom that the recipient has specified as its address for service by giving not less than 10 Business Days' formal notice under this Clause 14.

14.2 A formal notice served on:

- 14.2.1 a company or limited liability partnership registered in the United Kingdom must be served at its registered office;
- 14.2.2 a person resident in or incorporated in a country outside the United Kingdom must be served at the address for service in the United Kingdom of that party set out in the deed or document to which they are a party or if no such address has been given at their last known address in the United Kingdom[. The following [are the addresses] [is the address] for service in the United Kingdom<sup>1</sup> for:
  - (a) [Insert name of Landlord] – [Insert address];
  - (b) [Insert name of Tenant] – [Insert address]; and
  - (c) [Insert name of Guarantor – [Insert address]]; and
- 14.2.3 anyone else must be served:

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<sup>1</sup> If any of the original parties to this Lease are non-UK parties, include, if required, an address for service in the United Kingdom for that party here.

- (a) in the case of the Landlord, at any postal address in the United Kingdom shown from time to time for the registered proprietor or if no such address is given, at its last known address in the United Kingdom;
- (b) in the case of the Tenant, at the Property;
- (c) in the case of the Guarantor, at any postal address in the United Kingdom shown from time to time for the Guarantor or if no such address is given, at its last known address in the United Kingdom; and
- (d) in respect of any other party, at their last known address in the United Kingdom.

14.3 A formal notice given will be treated as served on the second Business Day after the date of posting if sent by pre-paid first class post or special delivery or at the time the formal notice is delivered to or left at the recipient's address if delivered to or left at that address.

14.4 If a formal notice is treated as served on a day that is not a Business Day or after 5.00pm on a Business Day it will be treated as served at 9.00am on the next Business Day.

14.5 Service of a formal notice by fax or e-mail is not a valid form of service under this Guarantee.

#### **15. Exclusion of Third Party Rights**

This Guarantee does not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of this Guarantee.

#### **16. Applicable Law and Jurisdiction**

This Guarantee is governed by and is to be construed in accordance with the law of Scotland and in so far as not already subject to it, the Parties irrevocably submit to the exclusive jurisdiction of the Scottish Courts.

17. **Registration**

The Guarantor consents to the registration of this Guarantee and any certificate pursuant to this Guarantee for preservation and execution: IN WITNESS WHEREOF