



GUARANTEE

by

[]

in favour of

[]

Property: []

Version 9
April 2015



GUARANTEE

by

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

in favour of

[] **LIMITED**, incorporated under the Companies Acts (Registered Number []), and having their Registered Office at [], and includes where the context so requires their successors as landlords under the Lease ("**Landlords**");

WHEREAS:

- (A) The Landlords are in right of the landlord's part of the Lease.
- (B) The Tenants are in right of the tenant's part of the Lease.
- (C) The Guarantors have agreed to guarantee the obligations of the Tenants under the Lease;

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 In this Guarantee:

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

- (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 Tenants to the Landlords in terms of the Lease;

"Interest" means interest on the sum in question at [] per cent per annum above the base rate from time to time of [[] Bank] from the date that such sum is due for payment or, if there is no such date specified, the date of demand for such sum until such sum is paid;

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

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

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

- (i) The Tenants going into liquidation including provisional liquidation or a petition being presented or resolution proposed or passed for their liquidation;
- (ii) The Tenants having a receiver appointed in respect of any part of their undertaking or assets;

- (iii) [The Tenants (not being a corporate body) having their estates sequestrated or becoming insolvent or apparently insolvent or signing a trust deed for creditors or effecting or proposing any general composition with their creditors;]
- (iv) The Tenants being dissolved, struck off or otherwise ceasing to exist;
- (v) The Landlords serving notice on the Tenants that an event has occurred which entitles the Landlords to irritate the Lease;
- (vi) The Lease being terminated by reason of irritancy;
- (vii) The Tenants 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;
- (viii) The Tenants instituting or giving notice of or indicating an intention to institute a voluntary arrangement or composition in respect of their debts or affairs; or
- (ix) The Tenants becoming unable to pay their debts within the meaning of section 123 of the Insolvency Act 1986;

"Tenants" means [[] Limited, incorporated under the Companies Acts (Registered Number []) and having their Registered Office at []] [[] residing at [];

"Working Day" means a day on which clearing banks in [Edinburgh and Glasgow] are open for normal business.

- 1.2 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]; words importing individuals include corporations and vice versa;
 - 1.2.5 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;
 - 1.2.6 any reference to a Clause is to the relevant Clause of this Guarantee;
 - 1.2.7 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;
 - 1.2.8 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;
 - 1.2.9 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;
 - 1.2.10 references to writing or written do not include [faxes or] e-mail;
 - 1.2.11 where at any one time there are two or more persons included in the expression "Guarantors" obligations contained in this Guarantee which are expressed to be made by the Guarantors

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

- 1.4 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 Guarantors irrevocably and unconditionally guarantee to the Landlords full and punctual payment or performance by the Tenants of the Guaranteed Obligations as and when they fall due for payment or performance and failing such payment or performance by the Tenants the Guarantors will on demand by the Landlords 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 Landlords 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 Landlords in connection with the enforcement of this Guarantee together with Interest.

3 Primary Obligation

The obligations of the Guarantors 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 Landlords) or for any reason are not recoverable from or capable of performance by the Guarantors under Clause 2 the Guarantors will still be liable to the Landlords in respect of such Guaranteed Obligations as if they were fully valid and enforceable and/or recoverable or capable of performance and the Guarantors were principal debtor in place of the Tenants.

4 Indemnity

- 4.1 The Guarantors undertake to indemnify the Landlords on demand against all liabilities, losses, costs, damages and expenses which the Landlords may incur by reason of or in connection with any failure by the Tenants 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 Guarantors undertake to indemnify the Landlords on demand against all liabilities, losses, costs, damages and expenses which the Landlords may incur by reason of or in connection with the Tenants 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 Guarantors' obligations under this Guarantee.

5 Guarantors to take new lease

Without prejudice to any other provision of this Guarantee if a Relevant Event occurs, the Landlords may serve notice on the Guarantors within [six] months after the Relevant Event requiring the Guarantors to accept, as required by the Landlords, 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 Tenants (or their predecessors as tenants under the

Lease) shall be treated by reference to the date of entry under the Lease and not the date of the Relevant Event; or

- 5.2 an assignment to the Guarantors of the Tenants' 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 Tenants under the Lease, or
- 6.2 on the part of the Guarantors under this Guarantee

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

7 Non-impairment

This Guarantee will not be discharged or prejudiced by:

- 7.1 the Landlords holding, acquiring, failing to perfect, releasing or giving up any obligation, security or remedy (present or future) for the obligations of the Tenants under the Lease or any neglect, delay or forbearance on the part of the Landlords in enforcing such obligation, security or remedy;
- 7.2 the Landlords giving time or any other indulgence to the Tenants;
- 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 Landlords irritating the Lease;
- 7.5 the Landlords releasing any person(s) comprised in the Tenants from liability under the Lease, or
- 7.6 any other act, omission or event whereby (but for this Clause) the Guarantors would be discharged in whole or in part from this Guarantee.

8 Discharge

If the Tenants assign their interest under the Lease in accordance with the terms of the Lease, or the Landlords accept a renunciation of the Tenants' interest under the Lease, the Landlords will at the request and cost of the Guarantors grant a valid discharge of this Guarantee as at the date of valid intimation of such assignment 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 Landlords have the right to assign or transfer this Guarantee to their successors as landlords under the Lease without the consent of the Guarantors.
- 9.2 The Guarantors do not have the right to assign or transfer their rights or obligations under this Guarantee.

10 Postponement of Claims by Guarantors

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

11 Exclusion of Set Off

- 11.1 All payments due by the Guarantors 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 shall be required by law the Guarantors will pay the Landlords such additional amount as may be necessary to ensure that the Landlords receive the full amount of the relevant payment as if such deduction or withholding had not been made.
- 11.2 The Guarantors will not be entitled to withhold or restrict performance of any obligation by them 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 Landlords will, except in the case of manifest error, conclusively constitute the amount of the Guaranteed Obligations or any sum due by the Guarantors 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 Guarantors will pay to the Landlords within five Working Days after written demand:
 - 13.1.1 the legal fees and expenses reasonably and properly incurred by the Landlords 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 [three] extracts ([one] of which will be delivered to the Guarantors' solicitors);
 - 13.1.3 the legal fees and expenses reasonably and properly incurred by the Landlords 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 [three] extracts (one of which will be delivered to the Guarantors' solicitors)];

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 of demand the Guarantors will pay Interest on such amounts.

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

14 **Notices**

14.1 Any notice, demand, request or certificate required by this Guarantee will be in writing and may be delivered personally, sent by post or transmitted by fax to the relevant party [using the relevant details specified in Clause 14.3].

14.2 Any notice, demand, request or certificate will be deemed to be received:

14.2.1 if delivered personally, (with proof of delivery) at the time of delivery;

14.2.2 if sent by recorded delivery post, 48 hours after the date of posting; and

14.2.3 in the case of fax, at the time when the sender's fax machine confirms transmission;

Provided that if, in the case of personal delivery or transmission by fax, such delivery or transmission occurs outwith normal business hours on a Working Day or on a day which is not a Working Day, delivery will be deemed to occur on the next Working Day.

14.3 [The details referred to in Clause 14.1 are:

[Guarantors]

Address: []

Fax Number: []

For the attention of: []

[Landlords]

Address: []

Fax Number: []

For the attention of: [];

or such other address, fax number or person as may be notified in writing from time to time by the relevant party to the other party for the purposes of this Clause.]

15 **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 non-exclusive jurisdiction of the Scottish Courts.

16 **Registration**

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