

Guarantee and Indemnity

This Deed is made on _____ Between _____

1. _____ (a company registered with number _____)
whose office is at _____ (**Guarantor**); and

2. **Aldermore Bank PLC** (a company registered in England with number 00947662) of 4th Floor, Block D, Apex Plaza, Forbury Road, Reading RG1 1AX (**Funder**).
It is agreed

1. Definitions and interpretation

1.1 Definitions

In this Deed:

Business Day means any day (other than a Saturday or Sunday or a public holiday) on which banks are generally open for business in London

Customer means

A company registered with number _____
whose address is at _____

Customer Agreement means the customer agreement with reference

number _____ entered into between the Customer and the Funder

Default Rate means 5% above Finance House Base Rate from time to time

Finance Documents means this Deed, the Customer Agreement and any document designated as such by the Funder and any Obligor

Guaranteed Obligations means

- a. all money and liabilities now or hereafter due, owing or incurred to the Funder by any Obligor under or in connection with the Finance Documents (or any of them) in whatsoever manner in any currency or currencies whether present or future, actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety together with all interest accruing on such moneys and liabilities and all costs, charges and expenses incurred by the Funder under any Finance Document and
- b. the due and proper performance and observance of all present and future obligations of any Obligor to the Funder under or in connection with the Finance Documents if and when they become performable in accordance with the terms of the Finance Documents, together with all actual costs, charges and expenses incurred by the Funder in respect of such obligations

Obligor means each of the Guarantor and the Customer and both of them together

Party means a party to this Deed

Security means a mortgage, charge, pledge, lien, assignment, assignment by way of security, guarantee or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same)

Tax Deduction means a deduction or withholding for or on account of Tax from a payment to the Funder under a Finance Document

1.2 Interpretation

- a. Unless a contrary indication appears, a reference in this Deed to:
 - i. a Party, the Customer or any other person shall be construed so as to include, where relevant, its successors in title, permitted assigns and permitted transferees;
 - ii. clauses are references to clauses of this Deed;
 - iii. a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented or restated (however fundamentally);
 - iv. a provision of law is a reference to a provision of any treaty, legislation, regulation, decree, order or by-law and any

secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced whether before or after the date of this Deed; and

- v. a time of day is a reference to London time.

- b. Clause and schedule headings are for ease of reference only.
- c. Words importing the plural shall include the singular and vice versa.
- d. References to any liability are to include any liability whether actual, contingent present or future.

1.3 Third party rights

- a. Unless expressly provided to the contrary in this Deed a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.
- b. Unless expressly provided to the contrary in any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Deed, any other Finance Document or any other agreement entered into under or in connection with this Deed.

1.4 Deed

This Deed is intended to take effect as a deed notwithstanding the fact that any Party may only execute this Deed under hand.

2. Guarantee and indemnity

2.1 Guarantee and indemnity

The Guarantor irrevocably and unconditionally:

- a. guarantees to the Funder punctual payment of and performance by each other Obligor of the Guaranteed Obligations;
- b. undertakes with the Funder that whenever another Obligor does not pay and/or perform any of the Guaranteed Obligations when due or performable, the Guarantor shall immediately on demand pay the relevant amounts and/or perform the relevant obligations as if it was the principal obligor; and
- c. agrees with the Funder that if, for any reason, any amount claimed by the Funder is not recoverable or any of the Guaranteed Obligations are not enforceable on the basis of a guarantee, the Guarantor will, as principal debtor and primary obligor and as a separate and independent obligation and liability from its obligations and liabilities under clauses 2.1(a) and 2.1(b), indemnify and keep indemnified the Funder in full and immediately on demand from and against all and any costs, losses, expenses and liabilities suffered or incurred by the Funder arising out of or in connection with:
 - i. any failure of any other Obligor to pay or perform any of the Guaranteed Obligations on the date when they are expressed to be due or performable; and
 - ii. any of the Guaranteed Obligations being or becoming totally or partially unenforceable by reason of illegality, invalidity, incapacity, lack or exceeding of powers, ineffectiveness of execution or any other matter.

2.2 Non-termination

This Deed may not be terminated by the Guarantor.

2.3 Continuing guarantee

This Deed is a continuing guarantee and will extend to the ultimate balance and liabilities of the Guaranteed Obligations, regardless of any intermediate payment, performance or discharge in whole or in part.

2.4 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any Security for those obligations or otherwise) is made by the Funder in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this clause 2 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

2.5 Waiver of defences

The obligations of the Guarantor under this Deed will not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this Deed (whether or not known to it or to the Funder) including without limitation:

- a. any time, waiver or consent granted to, or composition with, any Obligor or any other person;
- b. the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any such entity or person;
- c. the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, any Obligor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- d. any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- e. any amendment (however fundamental) or replacement of a Finance Document or any other agreement or instrument or Security;
- f. any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document, Security or any other agreement or instrument; or
- g. any insolvency or similar proceedings.

2.6 Guarantor intent

Without prejudice to the generality of clause 2.5 the Guarantor expressly confirms that it intends that this Deed shall extend from time to time to any (however fundamental) addendum, variation, increase, extension, replacement or addition of or to any of the Finance Documents and/or any facility or amount made available from time to time under any of the Finance Documents for any purpose.

2.7 Immediate recourse

The Guarantor waives any right it may have of first requiring the Funder to proceed against or enforce any other rights or Security or claim payment from any person before claiming from the Guarantor under this Deed. This waiver applies irrespective of any law or any provision of any Finance Document or other agreement or instrument to the contrary.

2.8 Appropriations

The Guarantor shall not direct the application by the Funder of any sums received by the Funder from it under this Deed. Until all the Guaranteed Obligations have been irrevocably paid, performed and discharged in full, the Funder may:

- a. refrain from applying or enforcing any other moneys, Security or rights held or received by the Funder in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
- b. hold in an interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Deed.

2.9 Deferral of Guarantor's rights

Until all the Guaranteed Obligations have been irrevocably paid, performed and discharged in full, and unless the Funder otherwise directs, the Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations in respect of the Guaranteed Obligations or by reason of any amount being payable, or liability arising, under this clause 2:

- a. to be indemnified by an Obligor;
- b. to claim any contribution from any Obligor in respect of any of the Guaranteed Obligations;
- c. to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Funder in respect of the Guaranteed Obligations or of any other guarantee or Security taken pursuant to, or in connection with, the Guaranteed Obligations by the Funder;

- d. to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under clause 2.1;
- e. to exercise any right of set-off against any Obligor; and/or
- f. to claim or prove as a creditor of any Obligor in competition with the Funder.

If the Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Funder by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Funder and shall promptly pay or transfer the same to the Funder for application towards the Guaranteed Obligations.

2.10 Additional security

This Deed is in addition to and is not in any way prejudiced by any other guarantee or Security now or subsequently held by the Funder.

3. Default interest

- 3.1 If the Guarantor fails to pay any amount payable by it under this Deed on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at the Default Rate. Any interest accruing under this clause 3 shall be immediately payable by the Guarantor on demand by the Funder.
- 3.2 Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount with monthly rests but will remain immediately due and payable.

4. Representations

The Guarantor represents and warrants to the Funder that:

- a. it is a limited liability company, duly incorporated and validly existing under the law of its jurisdiction of incorporation;
- b. it has the power to own its assets and carry on its business as it is being conducted;
- c. the obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations;
- d. the entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not conflict with:
 - i. any law or regulation, or judicial or official order, applicable to it;
 - ii. its constitutional documents; or
 - iii. any agreement or instrument binding upon it or any of its assets;
- e. it is not in default under any agreement to which it is a party to an extent or in a manner which might have a material adverse effect on its ability to perform its obligations under this Deed;
- f. it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed;
- g. no limit on its powers will be exceeded as a result of the giving of the guarantee and indemnity contemplated by this Deed;
- h. it is not, and none of its assets are entitled to immunity on any grounds from any legal action or proceeding (including, without limitation, suit, attachment prior to judgment, execution or other enforcement);
- i. its payment obligations under this Deed rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law generally;
- j. all authorisations required or desirable:
 - i. to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed;
 - ii. to make this Deed admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- k. it has not taken any corporate action nor have any other procedures or steps been taken or legal proceedings been started or (to the best of the Guarantor's knowledge and belief) threatened against it for its winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) or for the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or similar officer of it or of any or all of its assets or undertaking which has not been withdrawn, struck out or otherwise dismissed.

5. Payment mechanics

- 5.1 All payments by the Guarantor under this Deed shall be made for value on the due date at the time and in the currency in which the Guaranteed Obligations are due and payable or in such funds specified by the Funder as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- 5.2 Payment shall be made to such account with the Funder (or such other bank) as the Funder specifies.
- 5.3 All payments to be made by the Guarantor under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

6. Set-off

The Funder may set off any matured obligation due from the Guarantor under this Deed (to the extent beneficially owned by the Funder) against any matured obligation owed by the Funder to the Guarantor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Funder may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

7. Tax gross-up

- 7.1 The Guarantor shall make all payments to be made by it under this Deed without any Tax Deduction, unless a Tax Deduction is required by law.
- 7.2 If a Tax Deduction is required by law to be made by the Guarantor, the amount of the payment due from the Guarantor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- 7.3 If the Guarantor is required to make a Tax Deduction, the Guarantor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- 7.4 The Guarantor shall deliver to the Funder evidence reasonably satisfactory to the Funder that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

8. Discharge to be conditional

- 8.1 Any release, discharge or settlement between the Guarantor and the Funder in relation to this Deed shall be conditional upon no right, Security, disposition or payment to the Funder by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, the protection of creditors or insolvency or for any other reason.
- 8.2 If any such right, Security, disposition or payment is void or at any time so set aside or ordered to be refunded, the Funder shall be entitled subsequently to enforce this Deed against the Guarantor as if such release, discharge or settlement had not occurred and any such Security, disposition or payment had not been made.

9. Costs and expenses

The Guarantor shall pay to the Funder the amount of all costs and expenses (including legal fees, stamp duties and any value added

tax) incurred by the Funder in connection with the enforcement of, or preservation of, any rights under, this Deed on a full indemnity basis.

10. Certificates and determinations

Any certificate or determination by the Funder of a rate or an amount payable under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

11. Partial invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

12. Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of the Funder, any right or remedy available to it under this Deed or any other Finance Document or any other agreement or instrument shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed and the other Finance Documents or any other agreement or instrument providing for, or entered into in connection with, the Guaranteed Obligations are cumulative and not exclusive of any rights or remedies provided by law.

13. Assignment

- 13.1 The Funder may assign or otherwise transfer all or any part of its rights under this Deed.
- 13.2 The Guarantor may not transfer any of its obligations under this Deed or enter into any transaction which would result in any of those obligations passing to another person.

14. Notices

Any notice, demand or other communication given or made under or in connection with the matters contemplated by this Deed shall be in writing and shall be sent by prepaid first class post to the address of the relevant party set out above or such other address that party may notify to the other for the purposes of this clause 14 and if so sent shall be deemed to have been received (and reference herein to any receipt by any party shall include deemed receipt) by the addressee 2 Business Days after posting if sent by prepaid first class post or on delivery if delivered by hand.

15. Counterparts

This Deed may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Deed by e-mail attachment shall be an effective mode of delivery.

16. Governing law and jurisdiction

- 16.1 This Deed and any non-contractual obligations arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, English law.
- 16.2 The Parties to this Deed irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims) and no Party will argue to the contrary.

This Deed has been executed as a Deed by the Guarantor and signed by the Funder on the date stated at the beginning of this Deed.

Signatures

The Guarantor

Executed as a deed by

Signature

(Director)

Print Name

Acting by a director in the presence of

Name

Address of witness

Signature

The Funder

Signed by

Signature

duly authorised for and on behalf of **Aldermore Bank PLC**