

Since the Guarantor (as a Director of the Contractor) is an individual, not a company, include the following words on a cover page accompanying the Deed given by the Beneficiary to the Guarantor to sign.

Warning to the Guarantor:

This Deed of Guarantee is an important document.

The Beneficiary has already signed it but before you sign it, you should read it carefully, obtain independent legal advice about it from a solicitor, ensure that you understand both what it means and also what the implications of it will be if you sign it and have it witnessed.

If you do sign it, you might have to meet liabilities of the party defined in it as the "Contractor", if the Contractor does not do so, and you will have other obligations as well. Your commitment to pay will be unconditional but there is a limit to the amount the Beneficiary can ask you to pay - there are details about this limit in Clause 1.

Please sign and return this Note with the Deed signed by you to confirm that you have read it.

(signed)

<<Insert full name of Guarantor >>

DEED OF GUARANTEE - DIRECTOR'S GUARANTEE OF PERFORMANCE BY CONTRACTOR OF A PARTICULAR CONTRACT (LIMITED)

THIS DEED is made this <<Insert day>> of <<Insert Month>> of <<Insert Year>>

BETWEEN

<<Insert name of director of Contractor>>¹ of <<Insert director's personal address>> and his personal representatives and the receiver or other person lawfully acting on his behalf ("the Guarantor")

²

AND

<<Insert name of client or customer of the Contractor>> [of <<Insert client or customer's principal business address>>] **OR** [a company incorporated in England & Wales under number <<Insert number>> whose registered office address is at <<Insert client or customer's registered office address>>] and its successors and assigns ("the Beneficiary")

AND:

<<Insert Contractor's name>> a company incorporated in England & Wales under number <<Insert number>> whose registered office address is at <<Insert address>> and its successors and assigns ("the Contractor")

RECITALS:

- A. The Guarantor is a [director][<<Insert other connection with Contractor - see footnote 1>>] of the Contractor

¹ The Guarantor might instead be an individual who does not have a connection with or interest in the Contractor company, or has only an indirect or small interest, e.g. the spouse, partner, parent, child, or sibling of a director or of the main/sole shareholder, or perhaps a minority shareholder. He/she may do so solely for altruistic reasons. Alternatively, s/he may have a personal interest, e.g. if he/she has loaned any money to the Contractor which is still outstanding or if he/she is a supplier on credit to the Contractor. In such a case, the template can be adapted simply by rewording this statement. The detail of the Guarantor in the heading would then also need to be adapted

- B. The Beneficiary and the Contractor shall jointly and severally be bound to the Beneficiary to perform the Contract as defined below
- C. The Beneficiary requires, as a condition of entering into the Contract, a performance guarantee and indemnity in respect of the Contractor's performance and liabilities under the Contract

THE PARTIES HEREBY AGREE as follows:

1. Definitions

- "the Contract" means the Contract [insert name of Contract] attached] to be entered into between the Beneficiary and the Contractor under which the Contractor is to complete [a project] [certain works] for] [the Beneficiary] [the Contractor] [the Beneficiary].
- "the Guaranteed Obligations" means the obligations, by, the Contractor to the Beneficiary, not exceeding the Limit
- "the Guaranteed Liabilities" means the liabilities of any nature owed by the Contractor under the Contract or in respect of the Guaranteed Obligations, not exceeding the Limit
- "the Limit" means the sum of £<<Insert maximum amount payable in respect of the Guarantor's liabilities to the Beneficiary pursuant to clauses 2.1.1 [and] 2.1.2 [and 2.1.3] of this Deed of Guarantee and the Guaranteed Liabilities shall not include the interest on any claim under this Deed which interest shall be

2. Guarantee and Indemnity

- 2.1** In consideration of the Contractor entering into the Contract the Guarantor irrevocably and unconditionally undertakes to the Beneficiary as a primary obligation and as a condition of entering into the Contract that:
- 2.1.1** the Contractor shall perform all of the Guaranteed Obligations and the Guaranteed Liabilities immediately upon first written demand of the Beneficiary and the Guarantor; and
- 2.1.2** if the Contractor breaches the Guaranteed Obligations, the Guarantor will upon first written demand of the Beneficiary make good the breach at its own cost and

but the Guarantor shall not be liable for any costs or obligations under Sub-Clauses 2.1.1 and 2.1.2 [and 2.1.3] which are any greater than those imposed on the Contractor.

2.1.3 the Guarantor shall indemnify and keep indemnified the Beneficiary of all of the Guaranteed Obligations suffered or incurred by the Contractor to duly and punctually perform all of the Guaranteed Obligations.

The Guarantor's total liability under Sub-Clauses 2.1.1 and 2.1.2 [and 2.1.3] shall not exceed the sum of £100,000 (one hundred thousand pounds).

2.2 The Guarantor shall pay the sum demanded under this Deed from the date of demand until payment in full at the rate of <<Insert name of bank>>, accruing on a daily basis on which bank are open for business.

2.3 The obligations of the Guarantor shall extend to, and the Guarantor consents to, any extension, amendment to the Contract and to any supplemental agreement entered into by the Contractor.

2.4 In the event of default by the Contractor, the Beneficiary may enforce its rights against the Guarantor without first having to exhaust all of its remedies against the Contractor.

2.5 This Deed shall be added to any mortgage or security now or later held by the Beneficiary in respect of the Guaranteed Obligations or the Guaranteed Liabilities, and shall not be affected by any other security or right or remedy and may be enforced in the same.

3. Commencement and Expiry

3.1 The obligations in this Deed shall commence on the date when the Contractor enters into the Contract with the Beneficiary set out above.

3.2 This Deed shall continue in force until all of the Guaranteed Obligations have been paid in full by the Contractor or the date when all of the obligations in this Deed have been performed, whichever is later, and this Deed shall automatically terminate on that date.

4. Continuing Security etc.

This Deed is a guarantee and notwithstanding the Guaranteed Liabilities, it shall not be affected by any other security or right or remedy and may be enforced in the same. In whole or part of them, it shall not be affected by, and the liability of the Guarantor shall not be affected by:

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the Contractor and the Beneficiary set out above.

when all of the Guaranteed Obligations have been paid in full by the Contractor or the date when all of the obligations in this Deed have been performed, whichever is later, and this Deed shall automatically terminate on that date.

Guaranteed Obligations and the Guaranteed Liabilities, it shall not be affected by any other security or right or remedy and may be enforced in the same. In whole or part of them, it shall not be affected by, and the liability of the Guarantor shall not be affected by:

- 4.1** the death, incapacity, insolvency, liquidation, dissolution, administration, receivership, reorganisation, or any change in the constitution, name or style of the Guarantor or the Beneficiary; or
- 4.2** the grant by the Beneficiary of any time, indulgence, forbearance or concession, or the making of any arrangement by the Beneficiary with the Contractor, in respect of the Guaranteed Obligations or the Guaranteed Liabilities.

5. Subrogation

- 5.1** At any time when the Contractor has performed any of the Guaranteed Obligations and/or any default by the Guarantor in the performance of its obligations under this Deed, the Guarantor may only have:

- 5.1.1** of subrogation to the rights of the Contractor to enforce any security or other guarantee of the Contractor's obligations; or
- 5.1.2** to take the benefit of any security or other guarantee of the Contractor's obligations; or
- 5.1.3** to prove in the proceedings of the Contractor, as permitted by the Beneficiary, that the Contractor shall hold any amount recovered as a result of the exercise of its rights in respect of the Guaranteed Obligations by the Beneficiary and pay the same to the Beneficiary on first demand.

- 5.2** The Guarantor hereby irrevocably and exclusively authorises the Beneficiary not to take any security from the Contractor and agrees that the Beneficiary receives all monies payable by the Contractor in breach of this clause on trust for the Beneficiary.

- 5.3** Following the taking of any security or other guarantee by the Beneficiary with any voluntary arrangement or compromise for the benefit of any creditor of the Contractor, the Guarantor agrees to waive any right or remedy that it may have against the Contractor in respect of any debt paid or other obligation performed by the Guarantor under this Deed.

6. Payments by Guarantor to Beneficiary

- 6.1** All payments to be made by the Guarantor to the Beneficiary under this Deed shall be made:
- 6.1.1** in full without any deduction or withholding; and
- 6.1.2** free and clear of any tax, charges, costs, or withholding for or on account of any present or future tax, charges, costs, or withholding.
- 6.2** Any certificate given by the Beneficiary stating the interest payable or the amount owing to the Beneficiary by the Guarantor, in the absence of manifest error, be binding and conclusive evidence of the amount payable by the Guarantor for all purposes.
- 6.3** If any deduction or withholding is made by any applicable law to be made in respect of any payment made by the Guarantor to the Beneficiary, the sum payable shall be increased by the amount of such deduction or withholding.

the Guarantor to the Beneficiary that, after making the deduction or withholding, the Beneficiary shall receive a net sum equal to the sum which it would have received if no deduction or withholding had been made.

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6.4 The Guarantor shall not be liable to the Beneficiary of any amount received by the Beneficiary from the Guarantor.

7. Beneficiary's Waiver

Any waiver by the Beneficiary of any of the obligations of the Guarantor under this Deed, or of any Guaranteed Obligations shall only be effective if it is in writing and then only for the purpose and upon the terms and conditions, if any, set out in the waiver.

8. Severability

Any unenforceability of any of the provisions of this Deed shall not affect the enforceability of any other part.

9. Assignment by Beneficiary

The Beneficiary may assign the obligations of the Guarantor or Contractor being guaranteed by this Deed at any time without the consent of the Guarantor or Contractor, provided that the Beneficiary notifies the Guarantor or Contractor of such assignment before any such assignment.

10. Notices

Any notice or demand given by or to the Guarantor or Contractor in connection with this Deed shall be in writing, served on another party at the address of that other party's above address by post or by hand, or by email to the email address previously provided by that other party, and marked for that other party.

11. Applicable Law and Jurisdiction

This Deed and the rights and obligations created by it shall be governed by, and construed in accordance with, the law of England and to the exclusive jurisdiction of the English Courts.

Attach to the Deed the following documents: [Contract]

IN WITNESS whereof each of the parties has signed or caused to be signed this document as a Deed the day and year first above written .

S

GUARANTOR

Signed by <<Insert name of Guarantor>>

[signature of Guarantor]

In the presence of

<<Insert full name & address of witness>>

Occupation :

[signature of witness]

A

M

P

BENEFICIARY

[<<Insert name of Beneficiary>> Limited]

acting by

<<Insert full name of director of Beneficiary>>

[signature of director]

L

<<Insert name of director or secretary of Beneficiary>>

[signature of director/secretary]

Director/Secretary]

E

OR

[<<Insert name of Beneficiary if an in

[signature of Beneficiary]

In the presence of

<<Insert full name & address of witne

[insert signature of witness]

Occupation :

[signature of witness]

CONTRACTOR

<<Insert name of Contractor>> Limite

acting by

<<Insert name of director of Contract

[signature of director]

Director

<<Insert name of director or secretar

[signature of director/secretary]

Director