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FINANCE GUARANTEE - BANKS AND/OR FINANCIAL INSTITUTIONS

dated [_____]

created by

[Name of BANK/FINANCIAL INSTITUTION]

as the Finance Guarantor

in favour of

[HM TREASURY] OR [THE SPONSORING DEPARTMENT/AUTHORITY]

as the Public Sector Finance Provider

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THIS DEED is dated [_____] and made between:

- (1) [name of bank/financial institution] (the "**Finance Guarantor**")¹; and
- (2) [HM Treasury] or [the sponsoring department/Authority] (the "**Public Sector Finance Provider**").

Background

- (A) The Finance Guarantor is entering into this Deed in connection with the Finance Documents.
- (B) The Public Sector Finance Provider and the Finance Guarantor intend this document to take effect as a deed (even though the Public Sector Finance Provider only executes it under hand).

IT IS AGREED as follows:

1 Definitions and interpretation

1.1 Definitions

In this Deed:

"Public Sector Loan Facilities Agreement" means the loan facilities agreement dated [_____] between the Borrower and the Public Sector Finance Provider as amended from time to time.

"Guaranteed Amount" means the aggregate from time to time outstanding (including all fees, costs and expenses) in respect of the Public Sector Loan Facilities under the Public Sector Loan Facilities Agreement.

"Party" means a party to this Deed.

"Repeating Representations" means each of the representations set out in Clauses 7.1 (*Status*) to 7.4 (*Power and authority*) [and 7.6 (*Governing law and enforcement*)].

1.2 Incorporation of defined terms

1.2.1 Unless a contrary indication appears, a term defined in the Public Sector Loan Facilities Agreement has the same meaning in this Deed.

1.2.2 The principles of construction set out in the Public Sector Loan Facilities Agreement shall have effect as if set out in this Deed.

1.3 Clauses

In this Deed any reference to a "Clause" is, unless the context otherwise requires, a reference to a Clause of this Deed.

¹ The draft assumes a single guarantor (i.e. a fronting bank (see paragraph [11.4] of HMT's CGF Technical Note 1) but the terms would be substantially similar if a syndicate of banks were providing the guarantee on a several basis.

1.4 Third Party Rights

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

2 Guarantee and indemnity

2.1 Guarantee and indemnity

The Finance Guarantor irrevocably and unconditionally:

- (a) undertakes with the Public Sector Finance Provider that whenever the Borrower does not pay any Guaranteed Amount by the time, on the date and otherwise in the manner specified in the Public Sector Loan Facilities Agreement (whether on the normal due date, on acceleration or otherwise), the Finance Guarantor shall [immediately]² on demand pay that amount as if it was the principal borrower; and
- (b) indemnifies the Public Sector Finance Provider immediately on demand against any cost, loss or liability suffered by it if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which the Public Sector Finance Provider would otherwise have been entitled to recover.

2.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of the Guaranteed Amount payable by the Borrower and/or the Finance Guarantor, regardless of any intermediate payment or discharge in whole or in part.

2.3 Reinstatement

If any payment by the Borrower and/or the Finance Guarantor or any discharge given by the Public Sector Finance Provider (whether in respect of the obligations of the Borrower and/or the Finance Guarantor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of the Finance Guarantor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Public Sector Finance Provider shall be entitled to recover the value or amount of that security or payment from the Finance Guarantor, as if the payment, discharge, avoidance or reduction had not occurred.

2.4 Waiver of defences

The obligations of the Finance Guarantor under this Clause 2 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 Clause 2 (without limitation and whether or not known to it or the Public Sector Finance Provider) including:

- (a) any time, waiver or consent granted to, or composition with, the Borrower, the Finance Guarantor or any other person;

² Appropriate time period to be discussed.

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- (b) the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor;
- (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, the Borrower, the Finance Guarantor 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 the Borrower, the Finance Guarantor or any other person;
- (e) any amendment (however fundamental) or replacement of a Finance Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security;
- (g) any insolvency or similar proceedings; or
- (h) forfeiture of the Guarantee Fee in accordance with Clause 9.

2.5 Immediate recourse

The Finance Guarantor waives any right it may have of first requiring the Public Sector Finance Provider (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Finance Guarantor under this Clause 2. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

2.6 Appropriations

Until all Guaranteed Amounts which may be or become payable by the Borrower or the Finance Guarantor to the Public Sector Finance Provider under or in connection with the Finance Documents have been irrevocably paid in full, the Public Sector Finance Provider (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Public Sector Finance Provider (or any trustee or agent on its behalf) 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 Finance 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 Finance Guarantor or on account of the Finance Guarantor's liability under this Clause 2.

2.7 Deferral of Finance Guarantor's rights

Until all Guaranteed Amounts which may be or become payable by the Borrower or the Finance Guarantor to the Public Sector Finance Provider under or in connection with the Finance Documents have been irrevocably paid in full and unless the Public Sector Finance Provider otherwise directs, the Finance Guarantor will not exercise

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any rights which it may have by reason of performance by it of its obligations under the Finance Documents:

- (a) to be indemnified by the Borrower;
- (b) to claim any contribution from any other Finance Guarantor of the Borrower's obligations under the Finance Documents; and/or
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Public Sector Finance Provider under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Public Sector Finance Provider.

2.8 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Public Sector Finance Provider.

3 Interest

3.1 Default interest

If the Finance 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 a rate which is the sum of [1] per cent and the rate which would have been payable under the Public Sector Loan Facilities Agreement if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Public Sector Finance Provider (acting reasonably). Any interest accruing under this Clause 3.1 shall be immediately payable by the Finance Guarantor on demand by the Public Sector Finance Provider.

3.2 Compounding

Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

4 [Tax gross up and indemnities]³

4.1 Definitions

4.1.1 In this Deed:

"**Tax Credit**" means a credit against, relief or remission for, or repayment of any Tax.

"**Tax Deduction**" means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

³ HMT considering appropriate tax wording.

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"**Tax Payment**" means either the increase in a payment made by the Finance Guarantor to the Public Sector Finance Provider under Clause 4.2 (*Tax gross-up*) or a payment under Clause 4.3 (*Tax indemnity*).

- 4.1.2 Unless a contrary indication appears, in this Clause 4 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

4.2 Tax gross-up

- 4.2.1 The Finance Guarantor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- 4.2.2 The Finance Guarantor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Public Sector Finance Provider accordingly. Similarly, the Public Sector Finance Provider shall notify the Finance Guarantor on becoming so aware in respect of a payment payable to it.
- 4.2.3 If a Tax Deduction is required by law to be made by the Finance Guarantor, the amount of the payment due from the Finance 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.
- 4.2.4 If the Finance Guarantor is required to make a Tax Deduction, it 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.
- 4.2.5 Within [thirty] days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Finance Guarantor shall deliver to the Public Sector Finance Provider evidence reasonably satisfactory to the Public Sector Finance Provider that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

4.3 Tax indemnity

- 4.3.1 To the extent not paid by the Borrower, the Finance Guarantor shall (within [three] Business Days of demand by the Public Sector Finance Provider) pay to the Public Sector Finance Provider an amount equal to the loss, liability or cost which the Public Sector Finance Provider determines will be or has been (directly or indirectly) suffered for or on account of Tax by it in respect of a Finance Document.
- 4.3.2 Paragraph (a) above shall not apply:
- (i) with respect to any Tax assessed on the Public Sector Finance Provider:
- under the law of the jurisdiction in which the Public Sector Finance Provider is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Public Sector Finance Provider is treated as resident for tax purposes if that Tax is imposed on or calculated

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by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Public Sector Finance Provider; or

- (ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 4.2 (*Tax gross-up*).

4.4 Tax Credit

If the Finance Guarantor makes a Tax Payment and the Public Sector Finance Provider determines that:

- (a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and
- (b) the Public Sector Finance Provider has obtained, utilised and retained that Tax Credit,

the Public Sector Finance Provider shall pay an amount to the Finance Guarantor which the Public Sector Finance Provider determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Finance Guarantor.

4.5 Stamp taxes

The Finance Guarantor shall pay and, within [three] Business Days of demand, indemnify the Public Sector Finance Provider against any cost, loss or liability the Public Sector Finance Provider incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of this Deed.

4.6 Value added tax

4.6.1 All consideration expressed to be payable under a Finance Document by the Finance Guarantor to the Public Sector Finance Provider shall be deemed to be exclusive of any VAT. If VAT is chargeable on any supply made by the Public Sector Finance Provider to the Finance Guarantor in connection with a Finance Document, the Finance Guarantor shall pay to the Public Sector Finance Provider (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT.

4.6.2 Where a Finance Document requires the Finance Guarantor to reimburse the Public Sector Finance Provider for any costs or expenses, the Finance Guarantor shall also at the same time pay and indemnify the Public Sector Finance Provider against all VAT incurred by it in respect of the costs or expenses.]

5 Currency indemnity

5.1 If any sum due from the Finance Guarantor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (i) making or filing a claim or proof against the Finance Guarantor;

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- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Finance Guarantor shall as an independent obligation, within [three] Business Days of demand, indemnify the Public Sector Finance Provider against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- 5.2** The Finance Guarantor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

6 Enforcement costs

To the extent not paid by the Borrower, the Finance Guarantor shall, within [three] Business Days of demand, pay to the Public Sector Finance Provider the amount of all costs and expenses (including legal fees) incurred by the Public Sector Finance Provider in connection with the enforcement of, or the preservation of any rights under, any Public Sector Finance Document.

7 Representations

The Finance Guarantor makes the representations and warranties set out in this Clause 7 to the Public Sector Finance Provider on the date of this Deed.

7.1 Status

7.1.1 It is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

7.1.2 It has the power to own its assets and carry on its business as it is being conducted.

7.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are, [subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Schedule 2 (*Conditions precedent*) of the Public Sector Loan Facilities Agreement], legal, valid, binding and enforceable obligations.

7.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets.

7.4 Power and authority

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, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

7.5 Validity and admissibility in evidence

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
- (b) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect.

7.6 [Governing law and enforcement

7.6.1 The choice of English law as the governing law of the Finance Documents to which it is a party will be recognised and enforced in its jurisdiction of incorporation.

7.6.2 Any judgment obtained in England in relation to a Finance Document to which it is a party will be recognised and enforced in its jurisdiction of incorporation.]

7.7 Repetition

The Repeating Representations are deemed to be made by the Finance Guarantor by reference to the facts and circumstances then existing on the date of each Utilisation Request and the first day of each Interest Period.

8 Information undertakings

The undertakings in this Clause 8 remain in force from the date of this Deed for so long as any amount is outstanding under the Public Sector Finance Documents or any Commitment is in force.

8.1 Guarantee Trigger Event

The Finance Guarantor shall notify the Public Sector Finance Provider in respect of the occurrence of a Guarantee Trigger Event or any event or circumstance which will, or is likely to, lead to the occurrence of a Guarantee Trigger Event..

8.2 Notification of default

The Finance Guarantor shall notify the Public Sector Finance Provider of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless the Finance Guarantor is aware that a notification has already been provided by the Borrower).

9 Substitute Finance Guarantors

Following the occurrence of a Guarantee Trigger Event, the Public Sector Finance Provider may require the Finance Guarantor to procure (at the Finance Guarantor's sole cost and expense) a Substitute Finance Guarantor who will enter into a finance guarantee in favour of the Public Sector Finance Provider on the same terms as this Finance Guarantee (or otherwise on terms satisfactory to the Public Sector Finance Provider) in respect of any Credit Deterioration Period.

The Finance Guarantor agrees that the Guarantee Fee⁴ payable (and any other amounts payable by the Borrower to Finance Guarantor) by the Borrower pursuant to Clause [] (*Payment of Guarantee Fee*) of the Guarantee Facilities Agreement shall, during any Credit Deterioration Period, be payable by the Borrower to the Public Sector Finance Provider and that such payment shall, to the extent of such payment, constitute a full discharge of the obligations of the Borrower under the Guarantee Facilities Agreement in respect thereof. The Finance Guarantor further acknowledges and agrees to the terms of Clause • (*Payment of Guarantee Fee*) of the Public Sector Loan Facilities Agreement.

If the Finance Guarantor receives any amount from the Borrower during any Credit Deterioration Period, the Finance Guarantor agrees to immediately turn the same over to the Public Sector Finance Provider and pending such payment to hold the same on trust for the Public Sector Finance Provider for the purpose of discharging any amount outstanding in respect of the Guaranteed Amounts.

10 General undertakings

The undertakings in this Clause 9 remain in force from the date of this Deed for so long as any amount is outstanding under the Public Sector Finance Documents or any Commitment is in force.

10.1 Authorisations

The Finance Guarantor shall promptly:

(a) obtain, comply with and do all that is necessary to maintain in full force and effect; and

(b) supply certified copies to the Public Sector Finance Provider of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

10.2 Compliance with laws

The Finance Guarantor shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.

11 Changes to the Parties

11.1 Changes to the Public Sector Finance Provider

⁴ HMT intends that the Guarantee Fee should be payable on the basis set out in paragraph 11.1 of the GFA Term Sheet.

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11.1.1 The consent of the Finance Guarantor is required for an assignment or transfer by the Public Sector Finance Provider other than in accordance with Clause [●] (*Changes to the Public Sector Finance Provider*) of the Public Sector Loan Facilities Agreement, unless an Event of Default is continuing.

11.1.2 The consent of the Finance Guarantor to an assignment or transfer must not be unreasonably withheld or delayed. The Finance Guarantor will be deemed to have given its consent five Business Days after the Public Sector Finance Provider has requested it unless consent is expressly refused by the Finance Guarantor within that time.

11.2 Changes to the Finance Guarantor

The Finance Guarantor may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

12 Incorporation of terms

The provisions of [Clause [●] (*Conduct of business by the Public Sector Finance Provider*) and Clause [●] (*Payment Mechanics*) to Clause [●] (*Enforcement*)] of the Public Sector Loan Facilities Agreement shall be incorporated into this Deed as if set out in full in this Deed and as if references in those clauses to "this Agreement" and "the Borrower" were references to this Deed and the Finance Guarantor.

13 Governing law

This Deed is governed by English law.

This Deed has been entered into on the date stated at the beginning of this Deed.

The Finance Guarantor

Address:

Fax No:

Attention:

By:

The Public Sector Finance Provider

Address:

Fax No:

Attention:

By:

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