

London Borough of Southwark

Residential Conveyancing Services
Tender

Section 9b

Parent Company Guarantee

Form of Parent Company Guarantee

THIS DEED is made the _____ day of _____ 20____

BETWEEN

- 1 _____ (Company Registration No. *****)
("the Guarantor") whose registered office is at _____ (1) and
- 2 **The Mayor and Burgesses of the London Borough of Southwark** ("the Authority") of
160 Tooley Street London SE1 2QH (2)

WHEREAS:

- A. The Authority and _____ ("the Provider") have entered into an agreement ("the Agreement") whereby the Provider will provide the services set out in the Agreement ("the Services") and the Guarantor has given the Authority an undertaking to enter into a Deed of Guarantee and Indemnity on the following terms.
- B. At the date of execution of this Deed, the Provider is a wholly owned subsidiary of the Guarantor.
- C. The Guarantor has agreed to guarantee the due performance of the Agreement in the manner hereinafter appearing.

NOW THEREFORE the Guarantor HEREBY AGREES with the Authority as follows:

- 1 That the Provider shall well and truly perform and/or observe all obligations, terms, provisions and stipulations under the Agreement. If the Provider shall fail to perform and/or observe the same, then the Guarantor guarantees to pay upon receipt of a written demand from the Authority all sums stated in such demand to be payable by the Provider to the Authority and unpaid, together with all costs and expenses which the Authority may incur in enforcing this Deed provided that the Authority shall, by way of written notice have given the Provider reasonable time to remedy its defaults (which, in any event, shall mean not less than 14 days from the date of such notice) and (to the extent that such defaults are capable of remedy) provided that those defaults shall not have been remedied to the Authority's satisfaction.
- 2 The Guarantor unconditionally and irrevocably undertakes to indemnify the Authority fully and promptly against all damages, costs, claims, losses, demands, liabilities and expenses which may be incurred by the Authority because of any default on the part of the Provider in performing the Services and observing the terms of the Agreement, and

in particular such costs incurred as a result of a third party providing all or any part of the Services because of a failure by the Provider to provide the Services in accordance with the Agreement.

3 **IT IS FURTHER AGREED AND DECLARED** that in the event of the guarantee under this Agreement being called then the Guarantor will have the option of completing the Provider's obligation itself to the satisfaction of the Authority under the Agreement or of appointing another Provider to do so with the prior approval of the Authority (which shall not be unreasonably withheld or delayed).

4 The liability of the Guarantor shall be co-extensive with the liability of the Provider under the Contract.

5 The Guarantor shall not be discharged from this Deed, nor shall its liability be affected by any agreement, conduct or forbearance between or given to the Provider by the Authority or by any delay or failure to exercise any right under this Deed. The Authority shall not be obliged to require payment from the Provider before enforcing the terms of this Deed, and the Guarantor shall be treated as being jointly and severally liable with the Provider for all liabilities, obligations and undertakings provide for in the Agreement.

6 This Deed shall remain in full force and effect until all money and liabilities due and owing or incurred by the Provider to the Authority have been fully satisfied, but in any event will cease to have effect upon the expiry of twelve (12) months from the expiry of the Agreement.

7 This Deed is in addition to and not in substitution for any other guarantee or security or other obligation given or owing to the Authority in respect of sums due or liabilities arising under the Agreement.

8 If any money shall become payable under this Deed, then so long as any money due and payable by the Provider to the Authority under the terms of the Agreement remains unpaid, the Guarantor shall not:

8.1 seek to enforce payment by subrogation or otherwise of the amounts paid by the Guarantor under this Deed;

8.2 in the event of the insolvency, winding up, liquidation or dissolution of the Provider prove in competition with the Authority in respect of any money owing to the Guarantor by the Provider, but will give to the Authority the benefit of any such proof and of all money to be received in respect thereof.

9 Any demands made by the Authority under this Deed shall be sent to the Guarantor at the address set out above or such other address as may be notified by the Guarantor to the Authority. Such demand shall be deemed to have been received by the Guarantor:

9.1 if delivered by hand, at the time of delivery;

9.2 if sent by post, on the next day after the day of posting, not counting a Saturday, Sunday or public holiday in the place both of despatch and receipt of the demand;

- 9.3 if sent by fax, at the time of transmission.
- 10 This Deed shall remain in force despite any change in the constitution of the Guarantor, the Provider or the Authority.
- 11 The Guarantor warrants and represents to the Authority that it has full power and authority to enter into and perform its obligations under this Deed.
- 12 The Guarantor warrants and represents to the Authority that it is the ultimate holding company of the Provider.
- 13 In the event that the warranty and representation that is set out in Clause 12 above ceases to be true for any reason during such time as this Deed remains in force, the Guarantor undertakes that it shall immediately notify the Authority in writing of the name of the Provider's new ultimate holding company and the date of the change of the ultimate holding company and shall procure that, no later than 21 days from the date of such notification, the new ultimate holding company shall execute a replacement Deed of Guarantee and Indemnity on substantially the same conditions as are set out in this Deed. In such circumstances the new Guarantor shall be liable for all liabilities that occur or have occurred in relation to this Deed or the replacement Deed of Guarantee and Indemnity. For the avoidance of doubt, the Guarantor shall remain liable under this Deed until a replacement Deed of Guarantee and Indemnity shall have been validly executed by the Provider's new ultimate holding company.
- 14 The Guarantor undertakes to immediately notify the Authority in writing if there is a material change in the financial status of the Guarantor which would materially impair the Guarantor's ability to honour the covenants that are set out in this Deed (such as in circumstances where the Guarantor or one or more of its subsidiaries transfers all or substantially all of its/their assets to another company) during such time as this Deed remains in force and shall procure that, no later than 21 days from the date of such notification, a new Guarantor of broadly equivalent financial status to the old Guarantor shall execute a replacement Deed of Guarantee and Indemnity on substantially the same conditions as are set out in this Deed. In such circumstances the new Guarantor shall be liable for all liabilities that occur or have occurred in relation to this Deed or the replacement Deed of Guarantee and Indemnity.
- 15 This Deed is personal to the Guarantor and the Guarantor shall not assign, sub-contract charge or otherwise deal with or transfer all or any of its rights and obligations under this Deed without the previous written consent of the Authority.
- 16 This Deed shall be binding on the Guarantor's successors in title.
- 17 Save for clause 16 above, a person who is not a party to this Deed will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

