

DATED \_\_\_\_\_

(1)

(2) **MONMOUTHSHIRE BUILDING SOCIETY**

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**GUARANTEE AND INDEMNITY**  
**for a personal guarantor**

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**WARNING**

**THIS IS AN IMPORTANT DOCUMENT.  
IF YOU SIGN THIS DOCUMENT, YOU WILL BE LEGALLY BOUND BY ITS TERMS.  
YOU WILL BE LIABLE TO US INSTEAD OF, OR AS WELL AS, THE DEBTOR.**

**YOU SHOULD TAKE INDEPENDENT LEGAL ADVICE  
BEFORE SIGNING THIS DOCUMENT.**

MORGAN COLE  
Bradley Court  
Park Place  
Cardiff CF10 3DP

**THIS GUARANTEE AND INDEMNITY** is made on

**PARTIES**

- (1) [ ] of [ ]
- (2) **MONMOUTHSHIRE BUILDING SOCIETY** whose Head Office is at Monmouthshire House, John Frost Square, Newport NP20 1PX

**1 Definitions and Interpretations**

1.1 In this Guarantee the following expressions will have the following meanings:

**"Debtor"** means [ ] Limited (company number [ ] ) whose registered office is [ ] .

**"Debtor's Obligations"** means all monies and liabilities which the Debtor now owes to us or may owe to us in the future in anyway, whether alone or jointly with anyone else. This includes:

- (a) liabilities which depend upon events which may or may not happen;
- (b) monies and liabilities which the Debtor owes as a guarantor;
- (c) monies and liabilities of the Debtor which arise from us complying with an order referred to in Clause 6.7 below; and
- (d) interest, fees, legal and other costs, charges and expenses which the Debtor owes to us.

**"Limit"** means £[ ] ([ ] pounds) plus interest and other amounts detailed in Clause 3.1 below which are payable by you under this Guarantee.

**"Notice Period"** means three months beginning on the day we receive the notice under Clause 5 below to prevent further liabilities arising under this Guarantee.

**"our" "us" "we"** means Monmouthshire Building Society and any successor to our business or other person to which we transfer our rights under this Guarantee.

**"Person"** means an individual, firm, corporation, society or unincorporated association.

**"you" "your"** means each person who signs this Guarantee.

1.2 Any reference in this Guarantee to:

- (a) words in the singular also include the plural, and words in the plural shall include the singular; and
- (b) this Guarantee and to any provisions of it or to any other document referred to in this Guarantee shall be construed as references to it in force for the time being and as amended, varied, supplemented, restated, substituted or novated from time to time.

1.3 Headings are for ease of reference only and are not to affect the interpretation of this Guarantee.

## **2 Guarantee and Indemnity**

- 2.1 In return for us providing a loan or further advance to the Debtor, you unconditionally guarantee that all the Debtor's Obligations will be paid.
- 2.2 If any of the Debtor's Obligations could not be recovered from you as a guarantor for any reason and whether or not we knew or should have known that reason, you agree as a separate commitment to make payment to us as though the Debtor's Obligations were your own debt to us rather than in your capacity as guarantor.
- 2.3 You will make payment under this Guarantee as soon as we demand it. We can demand payment from you even if we have not demanded payment from the Debtor.

## **3 Limit on Your Liability**

- 3.1 The maximum which you can be required to pay under this Guarantee is:
- (a) the Limit; and
  - (b) interest on the Limit (or, if less, the amount of the Debtor's Obligations) from the date we demand payment from you, or your notice to prevent further liabilities arising under this Guarantee becomes effective, until we are paid in full. Such interest is payable at the same rate and in the same way as for the Debtor's Obligations. The interest will be compounded (so that interest will be charged on accrued interest) at the same rate and in the same way as for the Debtor's Obligations. Interest will be payable even if a court judgement has been obtained or the Debtor becomes insolvent; and
  - (c) all legal and other costs, charges and expenses which we incur in enforcing or trying to enforce payment of this Guarantee; and
  - (d) any amount necessary to ensure that we receive the payment we would have received under this Guarantee if you had not had to deduct from the payment an amount for tax or a similar charge which you were required to deduct by law; and
  - (e) all legal and other costs, charges and expenses which we incur in defending any claim made against us as referred to in Clause 6.7 below.

## **4 Continuing Guarantee**

- 4.1 This Guarantee will:
- (a) continue until you or your personal or legal representatives give notice to us under Clause 5 below to prevent further liabilities arising under this Guarantee;
  - (b) continue as security regardless of any change in the amount or nature of the Debtor's Obligations;
  - (c) cover all or any part of the Debtor's Obligations; and
  - (d) not be affected by your death, bankruptcy, mental illness or any other matter whatsoever.

## **5 Preventing Further Liabilities Arising Under This Guarantee**

- 5.1 You or your personal or legal representatives may prevent further liabilities arising under this Guarantee by giving us three months written notice. To be effective the notice must actually be received by us.
- 5.2 If you give such notice, you will still be obliged to pay to us :
- (a) all the Debtor's Obligations existing at the end of the Notice Period. This will include any commitments of the Debtor which may become actual liabilities in the future and any interest, fees and other charges which the Debtor owes to us at the end of the Notice Period but which are not actually charged to the Debtor until a later date. The total amount you will have to pay in respect of the Debtor's Obligations will not however exceed the Limit; and
  - (b) interest on the Limit and all other amounts, costs, charges and expenses as detailed in Clause 3 above until the amount which you owe us has been irrevocably paid in full.
- 5.3 At the end of the Notice Period you will be liable for the Debtor's Obligations and other monies detailed in Clause 5.2 above whether or not we have demanded payment from you or the Debtor. You will not however have to pay us any of the Debtor's Obligations which arise after the end of the Notice Period.

## **6 Protecting Our Rights**

- 6.1 We may from time to time without your consent and without affecting your liabilities under this Guarantee:
- (a) provide, increase, decrease, vary or cancel any credit or facilities to the Debtor or any other person;
  - (b) give the Debtor or any other person time to pay any money owing to us or make any other arrangement, compromise or settlement with the Debtor or any other person; and
  - (c) deal or not deal with any security or guarantee given or offered for the Debtor's Obligations including not taking that security or guarantee, releasing, enforcing or not enforcing our rights under any such security or guarantee or releasing any guarantor or enforcing or not enforcing our rights against any guarantor.
- 6.2 Your liabilities under this Guarantee will not be affected by anything else which would affect your liabilities under it if you had owed the Debtor's Obligations to us directly rather than in your capacity as guarantor.
- 6.3 Until the Debtor's Obligations have been paid in full you will not be entitled to:
- (a) share in any security we hold or any money we receive; or
  - (b) make or enforce any of your rights or claims against the Debtor or any guarantor of the Debtor's Obligations; or
  - (c) make any claim in the insolvency of the Debtor or any guarantor of the Debtor's Obligations; or
  - (d) take any security from the Debtor or any guarantor of the Debtor's Obligations;

even if you have paid the full amount which you owe to us under this Guarantee.

6.4 Any security which you take from the Debtor or any guarantor for the Debtor's Obligations is to be held in trust for us and you will on our request deposit or transfer the title of such security to us.

6.5 We may place any money we receive under this Guarantee in a separate account, to protect the full amount of our claims against the Debtor or under any other guarantee or security for the Debtor's Obligations. In calculating the interest you have to pay we will treat the Debtor's Obligations as reduced by the amount we hold on this separate account.

6.6 This Guarantee is in addition to any other security or guarantee which we may hold at any time for the Debtor's Obligations. We do not have to enforce any other securities or guarantees before we enforce this Guarantee.

6.7 If :

- (a) we receive any payment or security from you, the Debtor, or any other person; and
- (b) we are later ordered under any insolvency law to restore the position to what it would have been if we had not received that payment or security,

you will be liable under this Guarantee as if we had never received the payment or been given the security.

6.8 You will be liable for all costs, charges and expenses which we incur in defending any claim made against us as referred to in Clause 6.7 above.

6.9 We may retain any security which we have for your commitments under this Guarantee for as long as such commitments are outstanding, and in particular the security may be kept for as long as we have or could have any liability under Clauses 6.7 or 6.8 above.

## **7 New Accounts**

7.1 If this Guarantee ceases to be continuing for any reason whatsoever, then we may open a new account or accounts in the name of the Debtor.

7.2 If we do not open a new account or accounts under Clause 7.1 above, we shall nevertheless be treated as if we had done so at the time that this Guarantee ceases to be continuing (whether by determination, calling in or otherwise) in relation to the Debtor.

7.3 As from that time, all payments made to us by or on behalf of the Debtor shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount for which this Guarantee is available at that time nor shall your liability under this Guarantee in any manner be reduced or affected by any subsequent transactions, receipts or payments into or out of any such accounts.

## **8 Payments and Taxes**

8.1 All sums payable by you under this Guarantee shall be paid to us in full without:-

- (a) any set-off, condition or counter-claim whatsoever; and
- (b) free and clear of all deductions or withholdings whatsoever other than as may be required by law or regulation which in either case is binding on you.

- 8.2 If any deduction or withholding is required by any law, practice or regulation (whether or not such practice or regulation has the force of law) for any payment due from you under this Guarantee or is in any event made, the relative sum payable by you shall be increased so that, after making the minimum deduction or withholding so required, you shall pay to us and we shall receive and be entitled to retain on the due date for payment a net sum at least equal to the sum which we would have received had no such deduction or withholding been required to be, or had in fact been, made.
- 8.3 You shall promptly deliver or procure the delivery to us of all receipts issued to you evidencing each deduction and withholding which you have made.

## **9 Changes in the Debtor**

- 9.1 If the Debtor is a partnership or other organisation, this Guarantee will not be affected by any change in the organisation's name or membership. This Guarantee will apply to all Debtor's Obligations owed to us by the persons who make up the organisation for the time being.
- 9.2 This Guarantee shall not be affected by the Debtor's dissolution, winding up, insolvency, death or mental incapacity.

## **10 More Than One Guarantor**

- 10.1 You will be bound by this Guarantee from the time that you sign it even if someone else was supposed to sign the Guarantee but did not do so.
- 10.2 If this Guarantee is signed by more than one person as guarantor, each of you will be liable to us individually and jointly for all your obligations under this Guarantee. If any guarantor gives notice under Clause 5 above, this will not prevent further liabilities arising under this Guarantee against the remaining guarantors.
- 10.3 We can release any one or more of the people signing this Guarantee from their obligations under it or make any other arrangements with them. Such release or other arrangements will not affect the obligations of the remaining guarantors.

## **11 Notices and Demands**

- 11.1 Every notice or demand under this Guarantee shall be in writing and may be delivered personally or by letter or facsimile if to :
- (a) you, to the address specified above or to your latest address known to us, or
  - (b) if to us, to the address specified above,
- or to such other address as we may notify to you, or you to us.
- 11.2 Every notice or demand (other than your notice under Clause 5 above) will be treated as having been received if:
- (a) sent by post, 24 hours after it was posted, even if it is not delivered or returned undelivered; or
  - (b) if delivered personally or sent by facsimile at the time of delivery or transmission.

11.3 If we receive notice of your death, any notice or demand by us made by any of the methods mentioned in Clause 11.1 and 11.2 above shall be treated as having been properly made on your personal representatives.

## **12 Costs**

12.1 You shall, on demand and on a full indemnity basis, pay to us the amount of all costs and expenses (including legal and out-of-pocket expenses and any Value Added Tax on such costs and expenses) which we incur in connection with:

- (a) any actual or proposed amendment, variation, supplement, waiver or consent under or in connection with this Guarantee; and
- (b) any discharge or release of this Guarantee.

## **13 Set-Off**

13.1 We may, without notice to you, apply any credit balance which is at any time held by us for your account in or towards satisfaction of any sum then due and payable from you under this Guarantee.

13.2 For the purposes of exercising any rights under this clause, or any rights under the general law, we may convert or translate all or any part of such credit balance into another currency applying a rate which in our opinion fairly reflects the relative prevailing rates of exchange.

## **14 General**

14.1 Each provision in this Guarantee can be separated from each other provision. If one or more of such provisions is invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected.

14.2 You acknowledge that you have not relied on any statement or assurance made by us or on our behalf to induce you to give this Guarantee. You further acknowledge that we are under no duty to provide you at any time with any financial or other information concerning the Debtor.

14.3 We will not lose any rights we have under this Guarantee if we do not use that right or we delay in using it. Using a right or part of one will not prevent us from using that right again, or any other right.

14.4 Any arrangements which we make with you concerning this Guarantee (including releasing you from the Guarantee) will only be effective if such arrangements are in writing.

14.5 This Guarantee document will remain our property after any release or settlement of your liability to us.

14.6 Any payments made by you under this Guarantee to us must be made in the currency in which the Debtor's Obligations are then denominated in.

14.7 A certificate signed by us stating the amount of the Debtor's Obligations or the amount due from you under this Guarantee shall in the absence of our obvious error, be conclusive.

## **15 Transfer**

15.1 We may transfer all or any of our rights under this Guarantee.

- 15.2 This Guarantee will remain enforceable, valid and binding on you even if we change our name or constitution or we are amalgamated or consolidated with any other person.
- 15.3 You may not transfer any of your rights under this Guarantee.

**16 Law and Jurisdiction**

This Guarantee shall be governed by the laws of England and Wales. You agree that legal action arising under this Guarantee may only be dealt with by the courts of England and Wales, except that we may sue you in any country in which you are located.

**SIGNED and DELIVERED** as a Deed )  
by [*Guarantor*] ) \_\_\_\_\_

in the presence of the following solicitor:

Solicitor's signature \_\_\_\_\_

full name \_\_\_\_\_

address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I confirm that I am a solicitor and that I have explained the nature, content and effect of this  
Guarantee to \_\_\_\_\_ before he/she signed this  
Guarantee and he/she informed me that he/she fully understood the same

**SIGNED and DELIVERED** as a Deed )  
by [*Guarantor*] ) \_\_\_\_\_

in the presence of the following solicitor:

Solicitor's signature \_\_\_\_\_

full name \_\_\_\_\_

address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I confirm that I am a solicitor and that I have explained the nature, content and effect of this  
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Guarantee and he/she informed me that he/she fully understood the same