

## Specimen bond

To: The Appropriate Authorities

### Performance Guarantee

We, (*insert name of financial institution*) of (*insert address*) (the “**Guarantor**”), are informed by (*insert name of Code Operator*) whose [*registered – only appropriate for a company*] office is at (*insert address of [registered] office*) [*and whose registered company number is – only if a company*] (the “**Code Operator**”) that under regulation 16 of the Regulations the Code Operator is under a duty to ensure that sufficient funds are available to meet the Specified Liabilities which arise on or before the date on which a Relevant Event occurs or may arise at any time during the Liability Period from the exercise of rights conferred upon the Code Operator by paragraph 9 of the Electronic Communications Code.

We have been requested by the Code Operator to issue a Performance Guarantee as contained in this document.

We irrevocably undertake that, if the Code Operator fails to meet some, any, or all of its liabilities under regulation 16 of the Regulations, we will pay to the Appropriate Authorities all payments that the Appropriate Authorities shall be entitled to recover by reason of the Code Operator’s default to the extent to which they are unable to recover them from the Code Operator.

ALWAYS PROVIDED THAT: -

1. The Guarantor’s liability under this Guarantee is limited to an amount or amounts, including all previous claims made under this Guarantee, not exceeding in aggregate (*insert figure*).
2. On (*insert date*) (the “**Arrangement Date**”), the Guarantor provided this Guarantee to pay for the Code Operator’s liabilities under the terms of the above-stated undertaking, which shall include (without limitation to the generality of the foregoing) any Specified Liabilities that might have arisen before the Arrangement Date.
3. The Guarantor’s liability under the Guarantee shall extend to any and all of the Code Operator’s Specified Liabilities which may arise at any time during the Liability Period. Subject to that exception only, this Guarantee will expire on (*insert date*) [*must be at least one year after the Arrangement Date*] (the “**Expiry Date**”).

4. Any demand hereunder must be received by the Guarantor at the address specified in paragraph 5 below on or before 30 days after the Expiry Date or, as the case may be, after the end of the Liability Period, after which this Guarantee will become of no effect whatsoever.

5. The relevant office address for the purposes of paragraph 4 above is *(insert address)*.

6. Without prejudice to any right or remedy to which any Appropriate Authority may be entitled under this Guarantee and which may arise at any time during which the Guarantee is valid and subsisting, this Guarantee is personal to you and is not transferable or assignable.

7. Any demand made by any Appropriate Authority under this Guarantee must be accompanied by or incorporate the following declaration:

*“We certify that we are an Appropriate Authority as described hereunder and that the amount claimed is due by reason of (insert name of Code Operator) having failed to fulfil its duty under regulation 16 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003.”*

and must be submitted in the following manner:

- (i) by letter, with a signature(s) on the demand authenticated by the bankers of the Appropriate Authority; or
- (ii) by the Appropriate Authority’s bankers’ TESTED TELEX/SWIFT, or other recognised authenticated means of transmission.

A demand submitted by facsimile transmission will not be accepted.

8. In this Guarantee:

(i) “**Act**” means the Communications Act 2003 (c. 21);

(ii) “**Appropriate Authority**” means:

(a) in relation to England and Wales, a relevant authority within the meaning of section 49(6) of the New Roads and Street Works Act 1991 (c. 22);

(b) in relation to Scotland, a person to whom notice would be required to be given by section 108(6) of the New Roads and Street Works Act 1991, as amended by section 180 of, and paragraph 168 of Schedule 13 to, the Local Government etc. (Scotland) Act 1994 (c. 39); and

(c) in relation to Northern Ireland, a relevant authority within the meaning of article 7(5) of the Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I.19));

(iii) “**Electronic Communications Code**” shall have the same meaning as it has in section 106 of the Act;

(iv) “**Liability Period**” means the period commencing on the occurrence of a Relevant Event and ending on the third anniversary thereof;

(v) “**Regulations**” means the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (S.I. 2003 No. 2553), as amended from time to time; and

(vi) “**Relevant Event**” occurs if:

(a) a code operator becomes subject to a direction under the Act by virtue of which he is prohibited from providing the electronic communications network for the purposes of the provision of which the Electronic Communications Code was applied to him by a direction under section 106(3)(a) of the Act;

(b) a code operator ceases to provide an electronic communications network;

(c) a code operator is deemed to be unable to pay his debts;

(d) a code operator enters into administration, receivership or liquidation;

(e) any person takes action for the voluntary winding-up, dissolution, bankruptcy or sequestration of a code operator;

(f) an administrator, receiver, trustee or similar officer of a code operator, or of all or any material part of the revenues and assets of that operator, is appointed;

(g) any order is made for the compulsory winding-up, dissolution, bankruptcy or sequestration of a code operator;

9. Except in so far as the context otherwise requires, words or expressions in this Guarantee shall have the meaning ascribed to them in this Guarantee and otherwise any word or expression shall have the meaning as it has in the Regulations.

10. This Guarantee shall be governed by, and construed in accordance with, the Laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.

*[signature, date and full name of duly authorised person of Guarantor]*