

GUARANTY OF PERFORMANCE

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This Guaranty of Performance (this "**Guaranty**") is entered into as of [EFFECTIVE DATE] (the "**Effective Date**") by:

[GUARANTOR LEGAL NAME], a [STATE] [ENTITY TYPE, e.g. limited liability company] with its principal place of business at [GUARANTOR ADDRESS] (the "**Guarantor**"), in favor of:

[BENEFICIARY LEGAL NAME], a [STATE] [ENTITY TYPE] with its principal place of business at [BENEFICIARY ADDRESS] (the "**Beneficiary**").

The Guarantor and the Beneficiary are each a "**Party**" and together the "**Parties**."

Recitals. The Beneficiary and [OBLIGOR LEGAL NAME] (the "**Obligor**") are parties to that certain [NAME OF UNDERLYING CONTRACT] dated [UNDERLYING CONTRACT DATE] (the "**Underlying Contract**"), under which the Obligor owes performance and payment obligations to the Beneficiary (the "**Guaranteed Obligations**"). The Guarantor has a financial or business interest in the Obligor and, to induce the Beneficiary to enter into or continue the Underlying Contract, the Guarantor is willing to guarantee the full and timely performance of the Guaranteed Obligations on the terms below. In consideration of the Beneficiary's agreement to enter into or continue the Underlying Contract, and other good and valuable consideration, the Guarantor agrees as follows.

1. Definitions and Interpretation

1.1 Guaranteed Obligations. "**Guaranteed Obligations**" means all present and future obligations of the Obligor to the Beneficiary under the Underlying Contract, including the full, complete, and timely performance of all covenants and services, the payment of all sums due, and the payment of damages, costs, and expenses arising from the Obligor's breach.

1.2 Default. "**Default**" means any failure by the Obligor to perform or pay a Guaranteed Obligation when due that is not cured within any applicable cure period under the Underlying Contract.

1.3 Obligor. "**Obligor**" means the party identified in the Recitals and its permitted successors and assigns under the Underlying Contract.

1.4 Interpretation. Headings are for convenience only. "Including" means "including without limitation." Capitalized terms not defined here have the meanings given in the Underlying Contract.

2. Guaranty

2.1 Guaranty of performance and payment. The Guarantor absolutely and unconditionally guarantees to the Beneficiary the full, prompt, and complete performance and payment of the Guaranteed Obligations when due, whether at stated maturity, by acceleration, or otherwise.

2.2 Nature of guaranty. This is a guaranty of payment and performance and not merely of collection. **[CHOOSE: This is a continuing guaranty that applies to all Guaranteed Obligations now or hereafter arising / This Guaranty is limited to the Guaranteed Obligations existing as of the Effective Date.]**

2.3 Performance on default. Upon a Default, the Guarantor will, at the Beneficiary's election and on written demand, either (a) cause the Guaranteed Obligations to be performed, or (b) pay to the Beneficiary the amounts and damages the Beneficiary is entitled to recover from the Obligor under the Underlying Contract on account of the Default.

2.4 Maximum liability. **[OPTIONAL: The Guarantor's aggregate liability under this Guaranty will not exceed [AMOUNT], plus enforcement costs under Section 6.3. Delete this Section for an unlimited guaranty.]**

3. Continuing and Independent Obligation

3.1 Continuing guaranty. This Guaranty is a continuing obligation, remains in effect until all Guaranteed Obligations are fully performed and paid, and is not discharged by any intermediate performance, payment, or settlement except to the extent of that performance, payment, or settlement.

3.2 Independent obligation. The Guarantor's obligations are independent of the Obligor's, and the Beneficiary may bring a separate action against the Guarantor without first proceeding against the Obligor, exhausting any collateral, or joining the Obligor, except as required by applicable law.

3.3 Reinstatement. If any payment by the Obligor or the Guarantor is rescinded, avoided, or returned (for example, as a preference in bankruptcy), the Guaranteed Obligations and this Guaranty are reinstated as if the payment had not been made.

4. Waivers by the Guarantor

4.1 Waiver of notices. To the extent permitted by applicable law, the Guarantor waives notice of acceptance of this Guaranty, notice of the creation or incurrence of Guaranteed Obligations, presentment, demand, protest, and notice of dishonor, except for the written demand expressly required by Section 2.3.

4.2 Waiver of defenses. To the extent permitted by applicable law, the Guarantor waives any defense arising from the Beneficiary's failure to pursue the Obligor or any collateral, and any defense based on the disability, dissolution, or bankruptcy of the Obligor.

4.3 Preserved consumer protections. Nothing in this Section waives any right or protection that applicable law makes non-waivable. Where local law restricts a guarantor's waiver of defenses or requires specific disclosures, those rules control over this Section.

4.4 Subrogation deferral. The Guarantor will not exercise any right of subrogation, reimbursement, or contribution against the Obligor until all Guaranteed Obligations are fully and finally paid and performed.

5. No Discharge

5.1 Modifications. The Beneficiary and the Obligor may, without the Guarantor's consent and without discharging the Guarantor, amend, renew, extend, or restructure the Underlying Contract, grant indulgences, or release or substitute collateral, provided that the Guarantor's liability for any obligation not expressly assumed by amendment will not be increased without the Guarantor's written consent.

5.2 Release of others. The release or settlement with the Obligor or any other guarantor does not discharge the Guarantor except to the extent of value actually received by the Beneficiary.

5.3 **No setoff.** The Guarantor's obligations are payable without setoff, counterclaim, or deduction, except as required by applicable law.

6. Representations, Covenants, and Costs

6.1 **Representations.** The Guarantor represents and warrants that: (a) it is duly organized and validly existing; (b) it has full authority to enter into and perform this Guaranty; (c) this Guaranty is duly authorized and binding on it; (d) it has a material interest in the Obligor and receives adequate consideration for this Guaranty; and (e) this Guaranty does not violate any law or agreement binding on it.

6.2 **Financial information.** Upon the Beneficiary's reasonable request, the Guarantor will provide current financial statements sufficient to evidence its ability to perform this Guaranty, subject to reasonable confidentiality protections.

6.3 **Enforcement costs.** The Guarantor will pay the Beneficiary's reasonable costs of enforcing this Guaranty, including reasonable attorneys' fees, to the extent permitted by applicable law.

7. Term and Termination

7.1 **Term.** This Guaranty continues until all Guaranteed Obligations are fully performed and paid, subject to the reinstatement provision in Section 3.3.

7.2 **Prospective termination.** If this is a continuing guaranty, the Guarantor may terminate it as to future Guaranteed Obligations on [NUMBER, e.g. 30] days' prior written notice to the Beneficiary, but such termination does not affect Guaranteed Obligations incurred or arising before the termination takes effect.

7.3 **Survival.** Sections 3, 4, 6.3, and 8 survive termination of this Guaranty.

8. General Provisions

8.1 **Governing law and venue.** This Guaranty is governed by the laws of the State of [STATE], without regard to its conflict-of-laws rules. The Guarantor submits to the exclusive jurisdiction of the state and federal courts located in [COUNTY, STATE].

8.2 **Entire agreement; amendment.** This Guaranty is the entire agreement between the Parties on its subject and may be amended only by a writing signed by the Guarantor and the Beneficiary.

8.3 **Assignment.** The Beneficiary may assign this Guaranty together with the Underlying Contract. The Guarantor may not assign or delegate its obligations without the Beneficiary's prior written consent.

8.4 **Severability and waiver.** If any provision is unenforceable, the rest remains in effect. The Beneficiary's failure to enforce a provision is not a waiver.

8.5 **Notices.** Notices must be in writing and sent to the addresses above (or as updated in writing) and are effective on receipt.

8.6 **Counterparts and electronic signature.** This Guaranty may be signed in counterparts and by electronic signature, each of which is an original and all of which together form one agreement.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty as of the Effective Date, and the Beneficiary has accepted it.

GUARANTOR

BENEFICIARY (acceptance)

Signature: _____

Signature: _____

Printed name: **[NAME]**

Printed name: **[NAME]**

Title: **[TITLE]**

Title: **[TITLE]**

Date: _____

Date: _____

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