

## Guarantee and Indemnity

(1) \_\_\_\_\_ ("Guarantor")

In favour of

(2) Paratus AMC Limited

Dated \_\_\_\_\_ 20 \_\_\_\_\_

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This Guarantee is dated \_\_\_\_\_ 20 \_\_\_\_

- (1) \_\_\_\_\_ as guarantor and indemnifier (the "**Guarantor**")  
in favour of
- (2) Paratus AMC Limited trading as Foundation Home Loans a company incorporated in England and Wales (registered number 03489004) as Lender (the "**Lender**").

**Background:**

- (A) The Lender has agreed to provide the Borrower with a Loan on the terms set out in the mortgage offer and associated mortgage conditions.
- (B) As a condition to the availability of the facilities under the Loan, the Guarantor has agreed to enter into this Guarantee in favour of the Lender for the purpose of providing credit support to the Lender for the Borrower's obligations under the Mortgage Deed.

It is agreed as follows:

**1. Definitions and Interpretation**

1.1 The definitions and rules of interpretation in this Clause apply in this Guarantee:

<b>"Borrower"</b>	_____, a company incorporated and registered in [*England and Wales / Scotland ( <i>delete as applicable</i> )]  with company number _____ whose registered office is at: _____ _____.
<b>"Business Day"</b>	means a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London.
<b>"Guaranteed Obligations"</b>	means all present and future payment obligations and liabilities of the Borrower due, owing or incurred under the Mortgage Deed to the Lender (including, without limitation, under any amendment, supplement or restatement of the Mortgage Deed, or, with the consent in writing of the Guarantor, in relation to any new or increased advances or utilisations).
<b>"Lender"</b>	means Paratus AMC Limited trading as Foundation Home Loans and its successors and assignees including any legal or equitable assignee of the mortgage whether by way of absolute assignment or by way of security only and those deriving title under it or them.
<b>"Loan"</b>	means the loan made to the Borrower on the terms set out in the mortgage offer and associated mortgage conditions.
<b>"Mortgage Deed"</b>	means the Mortgage Deed (or standard security, as the case may be) dated on or around the date hereof made between the Borrower and the Lender.
<b>"Rights"</b>	means any Security or other right or benefit whether arising by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise.
<b>"Security"</b>	means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person, or any other agreement having a similar effect.

<b>"Tax"</b>	means all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the UK or any other jurisdiction and any penalty, fine, surcharge, interest, charges or costs relating to them.
<b>"Warranties"</b>	means the representations and warranties set out in Schedule 1 (Representations and warranties).

## 1.2 Interpretation

- (a) A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment or re-enactment or extension and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts.
- (b) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders, and words in the singular include the plural and vice versa.
- (c) A reference to a Clause or Schedule is to a clause of, or a schedule to, this Guarantee unless the context requires otherwise.
- (d) A reference to this **Guarantee** (or any provision of it) or any other document shall be construed as a reference to this Guarantee, that provision or that document as in force for the time being and as amended, varied or supplemented in accordance with its terms or with the agreement of the relevant parties.
- (e) A reference to a **person** shall include a reference to an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.
- (f) A reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly).
- (g) A reference to **writing** or **written** includes emails but not faxes.
- (h) A reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description.
- (i) A reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisisation, registration and resolution.
- (j) A reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.
- (k) A reference to **determine** or **determined** means, unless the contrary is indicated, a determination made at the discretion of the person making it.
- (l) Clause, schedule and paragraph headings shall not affect the interpretation of this Guarantee.
- (m) Unless the context requires otherwise the expression **Lender** shall include its successors in title and/or assigns.

## 2 Guarantee and indemnity

- 2.1 In consideration of the Lender entering into the Mortgage Deed, the Guarantor guarantees to the Lender, whenever the Borrower does not pay any of the Guaranteed Obligations when due, to pay on written demand the Guaranteed Obligations.
- 2.2 The Guarantor as principal obligor and as a separate and independent obligation and liability from his/her obligations and liabilities under Clause 2.1 agrees to indemnify and keep indemnified the Lender in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Lender arising out of, or in connection with, any failure of the Borrower to perform or discharge any of its obligations or liabilities in respect of the Guaranteed Obligations.

- 2.3 The total amount recoverable from the Guarantor under this Guarantee shall not exceed:
- (a) the principal amount of £ [REDACTED] together with all amounts of interest which have been charged to the mortgage account in accordance with the terms of the Mortgage Deed; and
  - (b) all interest, commission, fees and other charges and all legal and other costs, charges and expenses as shall have accrued or shall accrue pursuant to the Mortgage Deed due to the Lender or this Guarantee due to the Lender at any time before or after the date of demand hereunder (including without limitation sums payable pursuant to Clause 5 (Costs), Clause 9 (Payments) and Clause 11 (Set-off)).

### 3 Protections

- 3.1 This Guarantee is created in favour of the Lender.
- 3.2 This Guarantee is and shall at all times be a continuing security and shall cover the ultimate balance from time to time owing to the Lender by the Borrower in respect of the Guaranteed Obligations.
- 3.3 The liability of the Guarantor under this Guarantee shall not be reduced, discharged or otherwise adversely affected by:
- (a) any intermediate payment, settlement of account or discharge in whole or in part of the Guaranteed Obligations;
  - (b) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Lender may now or after the date of this Guarantee have from or against any of the Borrower and any other person in connection with the Guaranteed Obligations;
  - (c) any act or omission by the Lender or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Borrower or any other person;
  - (d) any termination, amendment, variation, novation, replacement or supplement of or to any of the Guaranteed Obligations including without limitation any change in the purpose of, any increase in or extension of the Guaranteed Obligations and any addition of new Guaranteed Obligations;
  - (e) any grant of time, indulgence, waiver or concession to the Borrower or any other person;
  - (f) any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Borrower or any other person;
  - (g) any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, the Borrower or any other person in connection with the Guaranteed Obligations;
  - (h) any claim or enforcement of payment from the Borrower or any other person; or
  - (i) any act or omission which would not have discharged or affected the liability of the Guarantor had she/he been a principal debtor instead of a guarantor or indemnifier or by anything done or omitted by any person which, but for this provision, might operate to exonerate or discharge the Guarantor or otherwise reduce or extinguish his/her liability under this Guarantee.
- 3.4 The Lender shall not be obliged before taking steps to enforce any of its rights and remedies under this Guarantee:
- (a) to take any action or obtain judgment in any court against the Borrower or any other person; or
  - (b) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Borrower or any other person; or
  - (c) to make demand, enforce or seek to enforce any claim, right or remedy against the Borrower or any other person.
- 3.5 The Guarantor warrants to the Lender that she/he has not taken or received, and shall not take, exercise or receive the benefit of any Rights from or against the Borrower, its liquidator, an administrator, co guarantor or any other person in connection with any liability of, or payment by, the Guarantor under this Guarantee but:
- (a) if any of the Rights is taken, exercised or received by the Guarantor, those Rights and all monies at any time received or held in respect of those Rights shall be held by the Guarantor on trust for the Lender for application in or towards the discharge of the Guaranteed Obligations under this Guarantee; and

- (b) on demand by the Lender, the Guarantor shall promptly transfer, assign or pay to the Lender all other Rights and all monies from time to time held on trust by the Guarantor under this Clause 3.5.
- 3.6 This Guarantee is in addition to and shall not affect nor be affected by or merge with any other judgment, Security, right or remedy obtained or held by the Lender from time to time for the discharge and performance of the Borrower of the Guaranteed Obligations.
- 4. Interest**
- 4.1 The Guarantor shall pay interest to the Lender after as well as before judgment at the annual rate which is applicable under the Loan on all sums demanded under this Guarantee from the date of demand by the Lender or, if earlier, the date on which the relevant damages, losses, costs or expenses arose in respect of which the demand has been made, until, but excluding, the date of actual payment.
- 4.2 Interest under Clause 4.1 shall accrue on a day-to-day basis calculated by the Lender and shall be compounded on the last Business Day of each month.
- 5. Costs**
- 5.1 The Guarantor shall, on a full indemnity basis, pay to the Lender on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any valued added tax on those costs and expenses) which the Lender incurs in connection with:
- (a) any amendment, variation, supplement, waiver or consent under or in connection with this Guarantee;
  - (b) any discharge or release of this Guarantee;
  - (c) the preservation, or exercise and enforcement, of any rights under or in connection with this Guarantee or any attempt so to do; and
  - (d) any stamping or registration of this Guarantee.
- 6 Representations and Warranties**
- 6.1 The Guarantor represents and warrants that the Warranties are true and correct on the date of this Guarantee.
- 6.2 All the Warranties are deemed to be repeated by the Guarantor by reference to the facts and circumstances then existing on each day whilst this Guarantee remains in full force and effect.
- 7 Accounts**
- 7.1 The Lender may at any time and from time to time apply all or any monies held pursuant to this Guarantee or received from the Guarantor towards satisfaction of any of the monies, obligations and liabilities the subject of this Guarantee as the Lender, in its absolute discretion, may conclusively determine.
- 7.2 As from the time of opening or deemed opening of a new account or accounts, all payments made to the Lender by or on behalf of the Borrower 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 the liability of the Guarantor under this Guarantee in any manner be reduced or affected by any subsequent transactions, receipts or payments.
- 8 Discharge Conditional**
- 8.1 Any release, discharge or settlement between the Guarantor and the Lender in relation to this Guarantee shall be conditional on no right, Security, disposition or payment to the Lender by the Guarantor, the Borrower or any other person in respect of the Guaranteed Obligations being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency or for any other reason.

8.2 If any right, Security, disposition or payment referred to in Clause 8.1 is avoided, set aside or ordered to be refunded, the Lender shall be entitled subsequently to enforce this Guarantee against the Guarantor as if such release, discharge or settlement had not occurred and any such right, Security, disposition or payment had not been given or made.

## 9 **Payments**

9.1 All sums payable by the Guarantor under this Guarantee shall be paid in full to the Lender in the currency in which the Guaranteed Obligations are payable:

- (a) without any set-off, condition or counterclaim whatsoever; and
- (b) free and clear of any deductions or withholdings whatsoever except as may be required by law or regulation which is binding on the Guarantor.

9.2 If any deduction or withholding is required by any law or regulation to be made by the Guarantor, the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required.

9.3 The Guarantor shall promptly deliver or procure delivery to the Lender of all receipts issued to him evidencing each deduction or withholding which she/he has made.

9.4 The Guarantor shall not and may not direct the application by the Lender of any sums received by the Lender from the Guarantor under, or pursuant to, any of the terms of this Guarantee.

## 10 **Transfer**

10.1 This Guarantee is freely assignable or transferable without notice by the Lender.

10.2 The Guarantor may not assign any of his/her rights and may not transfer any of her obligations under this Guarantee or enter into any transaction which would result in any of those rights or obligations passing to another person.

## 11 **Set-off**

11.1 The Guarantor authorises the Lender to apply any credit balance (whether or not then due) to which the Guarantor is at any time beneficially entitled on any account with the Lender in (or towards) satisfaction of any sum then due and payable by the Guarantor to the Lender under this Guarantee, but which is unpaid. Where such application of balances requires the conversion of one currency into another the Lender may make such conversion at a market rate of exchange.

11.2 The Lender shall not be obliged to exercise any rights given to it under Clause 11.1. 12

## 12 **Evidence of Amounts and Certificates**

12.1 Any certificate, determination or notification by the Lender as to a rate or any amount payable under this Guarantee is (in the absence of manifest error) conclusive evidence of the matter to which it relates and shall contain reasonable details of the basis of determination.

## 13 **Remedies, Waivers, Amendments and Consents**

13.1 Any amendment to this Guarantee shall be in writing and signed by or on behalf of each party.

13.2 Any waiver of any right or consent given under this Guarantee is only effective if it is in writing and signed by the waiving or consenting party. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

13.3 No delay or failure to exercise any right under this Guarantee shall operate as a waiver of that right.

13.4 No single or partial exercise of any right under this Guarantee shall prevent any further exercise of the same right or any other right under this Guarantee.

13.5 Rights and remedies under this Guarantee are cumulative and do not exclude any rights or remedies provided by law or otherwise.

**14 Severance**

- 14.1 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Guarantee under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.
- 14.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**15 Provisions Applicable Under English law**

- 15.1 If the governing law of this Guarantee is the law of England and Wales then:
- (a) a person who is not a party to this Guarantee cannot enforce or enjoy the benefit of any term of this Guarantee under the Contract (Rights of Third Parties) Act 1999;
  - (b) if the rule against perpetuities applies to any trust created by this Guarantee, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009); and
  - (c) the parties to this Guarantee intended this to be a deed and confirm that is executed and delivered as deed and takes effect on the date stated at the beginning of this Guarantee.

**16 Provisions Applicable Under the Law of Scotland**

- 16.1 If the governing law of this Guarantee is the law of Scotland then:
- (a) person who is not a party to this Guarantee cannot enforce or enjoy the benefit of any term of this Guarantee under the Contracts (Third Party Rights) (Scotland) Act 2017; and
  - (b) the Guarantor consents to the registration of this Guarantee and any certificate referred to it in clause 12.1 for the preservation and execution in the books of Council and Session.

**17 Counterparts**

- 17.1 This Guarantee may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each party had signed the same document.

**18 Notices**

- 18.1 Each notice or other communication required to be given under, or in connection with, this Guarantee shall be:

- (a) in writing, delivered personally or sent by pre-paid first-class letter or email; and
- (b) sent:
  - I. to the Guarantor at:

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email:

\_\_\_\_\_



II. to the Lender at:

Address: 5 Arlington Square, Downshire Way, Bracknell, Berkshire RG12 1WA

Attention: Head of Customer Services

Email: CustomerServices@foundationhomeloans.co.uk

or to such other address or email address as is notified in writing by one party to the other.

18.2 Any notice or other communication that the Lender gives shall be deemed to have been received:

- (a) If sent by email, when received in legible form;
- (b) if given by hand, at the time of actual delivery; and
- (c) if posted, on the second Business Day after the day on which it was sent by first-class post.

A notice or other communication given as described in Clause 18.2(a) or Clause 18.2(b) on a day which is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

18.3 Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt by the Lender.

## 19 Governing Law and Jurisdiction

19.1 This Guarantee and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales unless the Guarantor's address (stated at the at the beginning of this Guarantee) is in Scotland, in which case the law of Scotland shall apply.

19.2 The parties to this Guarantee irrevocably agree that, subject as provided below, the courts of the country whose law governs this Guarantee (as determined under Clause 19.1) shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Guarantee or its subject matter or formation (including noncontractual disputes or claims). Nothing in this Clause shall limit the right of the Lender to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

19.3 The Guarantor irrevocably consents to any process in any proceedings under Clause 19.2 being served on it in accordance with the provisions of this Guarantee relating to service of notices. Nothing contained in this Guarantee shall affect the right to serve process in any other manner permitted by law.

## Schedule 1 Representations and Warranties

### 20 Capacity

20.1 The Guarantor has the capacity to execute, deliver and perform his/her obligations under this Guarantee and the transactions contemplated by them.

20.2 The Guarantor is not, by reason of illness or incapacity (whether mental or physical), incapable of managing his/her own affairs.

20.3 A court has not, in respect of the Guarantor, made an order or appointed either a deputy under the Mental Capacity Act 2005 or a guardian under the Adults with Incapacity (Scotland) Act 2000.

21 **Non-contravention**

21.1 The execution, delivery and performance of the obligations in, and transactions contemplated by, this Guarantee does not and will not contravene any agreement or instrument binding on the Guarantor or his/her assets, or any applicable law or regulation.

22 **Authorisations**

22.1 The Guarantor has taken all necessary action and obtained all required or desirable authorisations to enable him/her to execute, deliver and perform her obligations under this Guarantee and to make this Guarantee admissible in evidence in England and Wales and/or in Scotland (as the case may be). Any such authorisations are in full force and effect.

23 **Binding obligations**

23.1 The Guarantor's obligations under this Guarantee are, subject to any general principles of law limiting obligations, legal, valid, binding and enforceable.

24 **Litigation**

24.1 No litigation, arbitration or administrative proceedings are taking place, pending or, to the Guarantor's knowledge, threatened against him/her or any of his/her assets.

25 **Assets not immune to action**

25.1 None of the Guarantor's assets are entitled to immunity on any grounds from any legal action or proceeding (including, without limitation, suit, attachment prior to judgment, execution or other enforcement).

26 **No default**

26.1 No event or circumstance is outstanding which constitutes a default under any deed or instrument which is binding on the Guarantor, or to which his/her assets are subject, which might have a material adverse effect on the Guarantor's ability to perform his/her obligations under this Guarantee.

27 **Ranking of obligations**

27.1 The Guarantor's payment obligations under this Guarantee rank at least pari passu with the claims of all his/her other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law generally.

28 **Bankruptcy and analogous events**

28.1 The Guarantor has not suspended, or threatened to suspend, payment of his/her debts, is not unable to pay his/her debts as they fall due, has not admitted inability to pay his/her debts and is not deemed either unable to pay his/her debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986.

28.2 The Guarantor has not commenced negotiations with all or any class of his/her creditors with a view to rescheduling any of his/her debts, and has not made a proposal for or entered into any compromise or arrangement with his/her creditors.

28.3 The Guarantor is not the subject of a bankruptcy petition or order.

28.4 No person has become entitled to appoint a receiver over any of the assets of the Guarantor, and no receiver has been appointed over any of the assets of the Guarantor.

28.5 No creditor or encumbrancer has attached or taken possession of, and no distress, execution, sequestration or other such process has been levied or enforced on or sued against, any of the Guarantor's assets.

28.6 No event has occurred and no proceeding has been taken in any jurisdiction to which the Guarantor is subject which has an effect equivalent or similar to any of the events mentioned in paragraph 9.1 to paragraph 9.5 (inclusive).



**Signature**

BY ENTERING INTO THIS GUARANTEE YOU MIGHT BECOME LIABLE INSTEAD OF OR AS WELL AS THE BORROWER.

**Guarantor**

Signed and delivered as a deed by \_\_\_\_\_

\_\_\_\_\_  
Signature of Guarantor

in the presence of: \_\_\_\_\_  
Signature of witness

Name of witness: \_\_\_\_\_

Address of witness: \_\_\_\_\_  
\_\_\_\_\_

Occupation of witness: \_\_\_\_\_

**Guarantor Confirmation of Independent Legal Advice**

I, the Guarantor, hereby confirm that I have been advised by the Lender to take independent legal advice in relation to this guarantee.  
I further confirm that I have taken such advice as I require and deem necessary and desirable in connection with this Guarantee in order to be informed of the implications of executing and granting a personal guarantee and the risks that I, as the Guarantor, may thereby incur.

\_\_\_\_\_  
Signature of Guarantor

**Independent Lawyer Confirmation**

I, \_\_\_\_\_, legal adviser to the Guarantor, hereby confirm that, having reviewed this guarantee to which it relates and the Mortgage Deed, I have fully explained, in advance of signing this, the following to the Guarantor:

- (a) the terms of this guarantee; and
- (b) the implications for the Guarantor of signing guarantee.

I confirm that the Guarantor has made the decision to enter into and to provide the guarantee. further confirm that I am not conflicted in providing such advice to the Guarantor.

Signature of solicitor: \_\_\_\_\_

Name of firm: \_\_\_\_\_

**Checklist**

	Pages to Complete	Information Required
<input type="checkbox"/>	1	- Insert name of Guarantor and date of the Guarantee & Indemnity
<input type="checkbox"/>	3	- Insert the date of the Guarantee & Indemnity; - Section (1), insert the name of the Guarantor in; and - Section 1.1, under the definition of the “Borrower”, insert the name, company number and registered office address of the company borrower.
<input type="checkbox"/>	5	- Section 2.3 (a), insert the amount of principal loan amount where indicated.
<input type="checkbox"/>	8	- Section 18.1(b), insert the postal address and email address of the Guarantor for the purposes of serving notice.
<input type="checkbox"/>	11	<p>- <b>Guarantor</b> Please insert the name of the Guarantor in the top line and obtain their signature where indicated on the page.</p> <p>This Guarantee &amp; Indemnity must be witnessed any an independent witness over the age of 18 and must not be connected to the Guarantor.</p> <p>- <b>Guarantor Confirmation of Independent Legal Advice</b> Please obtain the Guarantor’s signature where indicated</p> <p>- <b>Independent Lawyer Confirmation Section</b> This section must be completed by the solicitor giving the independent legal advice to the director on entering into this Guarantee &amp; Indemnity (personal guarantee):</p> <p>i) insert the name and signature, where indicated, of the solicitor providing the Guarantor with Independent Legal Advice.</p> <p>ii) the solicitor must also provide the name of the firm of solicitors. If independent legal advice is being provided to the Guarantor remotely, the Distance ILA document must be used and separately attached to this G&amp;I.</p> <p>If FHL have agreed to a waive the requirement for independent legal advice, the Director must sign this section.</p>