



[PARTY 1]

and

[PARTY 2]

PARENT COMPANY GUARANTEE

In relation to Concession Contract for Public EV Charging Infrastructure in [●]

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TABLE OF CONTENTS

Clause		Page No.
1	INTERPRETATION	1
2	GUARANTEE	1
3	INDEMNITY	1
4	PAYMENT OF SUMS DUE	2
5	NO DISCHARGE OF LIABILITY	2
6	CONTINUING GUARANTEE	3
7	GUARANTOR'S WAIVER	3
8	GUARANTOR'S DEFENCES	3
9	PRIORITY OF CLAIMS	3
10	ASSIGNATION	4
11	THIRD PARTY RIGHTS	4
12	NOTICES	4
13	GOVERNING LAW AND JURISDICTION	5

PARENT COMPANY GUARANTEE

between

- (1) [●] (the “**Guarantor**”)
- (2) [●] (the “**Authority**”)

WHEREAS:

- (A) The Authority has entered into a concession contract (the “**Contract**”) with [●] (the “**Concessionaire**”) dated on or around the date of this Guarantee for the [installation, operation and maintenance of an EV infrastructure network in [●]].
- (B) Pursuant to the terms of the Contract, the Concessionaire has agreed to procure the provision of a guarantee in the terms hereof.
- (C) The Authority has requested and the Guarantor has agreed to provide a guarantee of the Concessionaire’s obligations under the Contract.

IT IS AGREED as follows:

1 INTERPRETATION

- 1.1 Unless expressly defined otherwise in this Guarantee, any defined term in this Guarantee shall have the same meaning given to such term under the Contract.

2 GUARANTEE

- 2.1 The Guarantor, as guarantor and as principal debtor:
 - 2.1.1 irrevocably and unconditionally guarantees to the Authority the full, due and punctual performance by the Concessionaire of all the Concessionaire’s duties and obligations under or arising in connection with the Contract;
 - 2.1.2 undertakes to the Authority fully to perform and observe such duties and obligations if the Concessionaire shall fail in any respect to perform and observe the same.

3 INDEMNITY

- 3.1 Subject to Clause 8, the Guarantor (as principal debtor and as a separate, primary and independent obligation and liability from its obligations and liabilities under Clause 2) undertakes to indemnify and keep indemnified the Authority against all claims, demands, losses, damages, liabilities, costs and expenses (including interest, fines, penalties, management time and reasonably and properly incurred legal and other professional costs and expenses) incurred by the Authority:

- 3.1.1 by reason of any breach by the Concessionaire of the Contract, including:
- (a) by reason of any failure to carry out, observe or perform all or any of its obligations or duties under or in connection with the Contract;
 - (b) if the Concessionaire fails to pay any claim, demand, loss, damage, liability, cost or expense due from the Contractor to the Authority under or arising in connection with the Contract;
- 3.1.2 if the employment of the Concessionaire under the Contract is terminated by operation of **Clauses [33], [34] or [35]** of the Contract;
- 3.1.3 if the Concessionaire fails to pay or observe any judgment (including of interest) of any court, adjudicator or competent tribunal in respect of the Concessionaire's liability to the Authority under or arising in connection with the Contract; and/or
- 3.1.4 in seeking to enforce this Guarantee and/or any judgment or order obtained in respect of this Guarantee.

4 PAYMENT OF SUMS DUE

- 4.1 The Guarantor shall, as principal debtor, pay any sum or sums due under Clause 2 and/or Clause 3 within seven days from receipt of a written demand from the Authority.
- 4.2 A certified copy of a decision, interlocutor or award of an adjudicator duly appointed in accordance with the Contract, a court or arbitrator shall be sufficient evidence of the establishment and ascertainment of the Concessionaire's breach or other default and the amount of losses, damages, liabilities, costs and expenses suffered or incurred by the Authority.
- 4.3 Notwithstanding Clause 4.2, where the Concessionaire becomes Insolvent a written demand by the Authority stating the sum due in terms of this Guarantee shall be sufficient evidence of the establishment and ascertainment of the Concessionaire's breach or other default and the amount of losses, damages, liabilities, costs and expenses suffered or incurred by the Authority. "Insolvent" means **[the occurrence of any of the events listed in paragraphs (h) through (k) of the definition of "Material Default at Clause 1.1 of the Contract"]**.
- 4.4 Unless otherwise expressly provided in this Guarantee, any sum not paid on or before the expiry of the seven day period referred to in Clause 4.1 shall bear interest from (and including) the expiry of the said period to (but excluding) the actual date of payment at the rate of **[●]** per cent per annum above the base lending rate of the time being of Royal Bank of Scotland PLC. Interest shall accrue and be payable from day to day, and shall be compounded annually.

5 NO DISCHARGE OF LIABILITY

- 5.1 The liability of the Guarantor will not be discharged or affected in any way by:

- 5.1.1 any fact, event or rule of law which, but for this Clause 5 might operate to release in whole or in part the Guarantor from its obligations under this Guarantee including (without limitation) any novation, assignation or termination of the Contract (whether automatic or otherwise).
- 5.1.2 any amendment, modification, supplement, or variation of or under the Contract;
- 5.1.3 any waiver, concession, allowance or extension of time, compromise or forbearance or forgiveness given to, or made with, the Contractor;
- 5.1.4 any settlement or arrangement made between the Concessionaire and the Authority in relation to the Contract;
- 5.1.5 any total or partial invalidity, illegality or unenforceability of the Contract;
- 5.1.6 a legal limitation, disability or incapacity of the Concessionaire; or
- 5.1.7 the liquidation, receivership, insolvency or change in status including the striking off from the Register of Companies of the Concessionaire.

6 CONTINUING GUARANTEE

- 6.1 This Guarantee creates a continuing guarantee and will remain in force until all the obligations of the Concessionaire under or arising in connection with the Contract have been fully satisfied.
- 6.2 The Authority may make more than one demand under this Guarantee.

7 GUARANTOR'S WAIVER

- 7.1 The Guarantor waives any right it may have (whether under the Contract or otherwise) of first requiring the Authority to proceed against or enforce any claims against any of the parties to the Contract or any other person.

8 GUARANTOR'S DEFENCES

Subject to Clauses 4.2 and 4.3, the Guarantor will be entitled in any proceedings brought by the Authority under this Guarantee to rely on any limitation in the Contract and to have the equivalent rights in defence of liability as the Concessionaire would have against the Authority under the Contract.

9 PRIORITY OF CLAIMS

As long as any liability incurred by the Concessionaire to the Authority under the Contract remains unsatisfied, the Guarantor shall not, in respect of any payment made or liability arising under this Guarantee, effect (or try to effect) any recovery from the Concessionaire,

whether by receipt of money, set-off, proof of debt, counterclaim, enforcement of security or otherwise.

10 **ASSIGNATION**

10.1 The Guarantor hereby agrees that the Authority shall be entitled to assign its interest in this Guarantee either absolutely or in security.

10.2 The Guarantor agrees that it shall not at any time assert that any permitted assignee in terms of this Guarantee is precluded from recovering any loss resulting from any breach of this Guarantee by reason that such permitted assignee is not an original party to this Agreement or that no loss or a different loss has been suffered by the original party or a prior assignee.

10.3 The Guarantor shall not assign, transfer or novate any of its rights or obligations hereunder.

11 **THIRD PARTY RIGHTS**

This Guarantee does not confer on any person other than the parties any right to enforce or otherwise invoke this Guarantee or any part of it under the Contract (Third Party Rights) (Scotland) Act 2017. For the avoidance of doubt, the provisions of this clause shall not prejudice any claim of a permitted assignee pursuant to clause 10 of this Guarantee.

12 **NOTICES**

12.1 Any demand or notice or be given under this Agreement shall be in writing and shall be delivered by hand or sent by prepaid first class post, Royal Mail signed for delivery or special delivery, to the party to receive the notice at the address specified in the preamble to this Agreement, or such other address as either party may specify by written notice to the other party. No notice may be given by fax or email.

12.2 A notice delivered by hand shall be deemed to have been served on the date on which it is delivered. A notice sent by prepaid first class post, signed for delivery or special delivery shall be deemed to have been served four days after posting.

12.3 In proving service it shall be sufficient to prove that personal delivery was made, or that such notice was properly addressed stamped and delivered into the custody of the postal authority as a pre paid first class post, signed for delivery or special delivery.

13 **GOVERNING LAW AND JURISDICTION**

13.1 This Guarantee and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non contractual claims or disputes) shall be governed by and construed according to Scots law and the parties submit to the exclusive jurisdiction of the Scottish courts.

13.2 The parties consent to the registration of this Guarantee in the Books of Council and Session for preservation and execution.

IN WITNESS WHEREOF these presents consisting of this and the preceding [four] pages are executed as follows:

SUBSCRIBED for and on behalf of the said [GUARANTOR]

at

on

by

Print Full Name

Director

before this witness

Print Full Name

Witness

Address

SUBSCRIBED for and on behalf of the said [AUTHORITY]

at

on

by

Print Full Name

Authorised Signatory

before this witness

Print Full Name

Witness

Address
