

VERIFICATION OF GUARANTEE

ISSUED TO The Offshore Pollution Liability Association Limited (hereinafter referred to as the 'Association').

We the undersigned Guarantor hereby certify and agree:

- (1) that a guarantee dated effective from.....
Time and Date
and expiring on.....
Time and Date
has been issued to(hereinafter referred to as the 'Operator') whose address is
.....
.....
by us, the undersigned Guarantor;
- (2) that the guarantee is substantially in the form set out in the Schedule to this form and covers the Operator's liability for claims for Remedial Measures and/or Pollution Damage arising out of or resulting from an Incident, as those terms are defined in the Offshore Pollution Liability Agreement dated 4th September 1974 as amended from time to time (herein referred to as 'OPOL'), occurring during the period the guarantee is in effect;
- (3) without prejudice to (2) above, that prior to the expiry date above the guarantee will not be cancelled until: (a) the Operator ceases to be a Party (as such that term is defined in OPOL) to OPOL; (b) 30 days after each of the Operator and Association has received notice in writing that the Guarantor has elected to terminate the guarantee; or (c) the date substitute evidence of financial responsibility as required by OPOL has been filed with and accepted by the Association, whichever occurs first;

- (4) that any amendment or change to the guarantee shall not be effected by the Guarantor or the Operator without the Association’s prior written consent;
- (5) that we have one or more of the following credit or financial strength ratings: “A-” or higher from Standard & Poor’s; “A-” or higher from A.M. Best; “A3” or higher from Moody’s; “A” or higher from Fitch; and/or the equivalent from another internationally recognised credit rating agency acceptable to the Association. If we cease to satisfy such requirement, then we shall as soon as practicable notify the Operator and the Association in writing of the same;
- (6) that the guarantee expressly provides that its terms may be enforced by the Association on behalf of its members from time to time; and
- (7) that we, the Guarantor, if not a company registered in England and Wales, have appointed an agent to receive service of any proceedings on our behalf in England and Wales.

All notices to be given to the Association in connection with this Form shall be sent by email (as a pdf, tif or similar uneditable attachment) to admin@opol.org.uk.

Date Name of Guarantor:.....

Address of By
 Guarantor **Officer of the Guarantor**

Name
Typed or Printed

Title
Typed or Printed

VERIFICATION OF GUARANTEE

ISSUED TO The Offshore Pollution Liability Association Limited (hereinafter referred to as the 'Association').

We the undersigned Guarantor hereby certify and agree:

(1) that (a) guarantee(s) dated effective from.....
Time and Date
 and expiring on..... has/have been
 issued to
Time and Date
 whose address is
 whose address is
 whose address is
 and whose address is
 (hereinafter referred to as the 'Operators') by us, the undersigned Guarantor;

(2) that the guarantee(s) is/are substantially in the form set out in the Schedule to this form and covers each Operator's liability for claims for Remedial Measures and/or Pollution Damage arising out of or resulting from an Incident, as those terms are defined in the Offshore Pollution Liability Agreement dated 4th September 1974 as amended from time to time (herein referred to as 'OPOL'), occurring during the period the guarantee(s) is/are in effect;

(3) without prejudice to (2) above, that prior to the expiry date above the guarantee(s) will not, in respect of each Operator, be cancelled until: (a) the Operator ceases to be a Party (as such that term is defined in OPOL) to OPOL; (b) 30 days after each of the Operator and Association has received notice in writing that the Guarantor has elected to terminate the guarantee; or (c) the date substitute evidence of financial

responsibility as required by OPOL has been filed with and accepted by the Association, whichever occurs first;

- (4) that any amendment or change to the guarantee(s) shall not be effected by the Guarantor or the Operators without the Association's prior written consent;
- (5) that we have one or more of the following credit or financial strength ratings: "A-" or higher from Standard & Poor's; "A-" or higher from A.M. Best; "A3" or higher from Moody's; "A" or higher from Fitch; and/or the equivalent from another internationally recognised credit rating agency acceptable to the Association. If we cease to satisfy such requirement, then we shall as soon as practicable notify the Operators and the Association in writing of the same;
- (6) that the guarantee(s) expressly provide(s) that its/their terms may be enforced by the Association on behalf of its members from time to time; and
- (7) that we, the Guarantor, if not a company registered in England and Wales, have appointed an agent to receive service of any proceedings on our behalf in England and Wales.

All notices to be given to the Association in connection with this Form shall be sent by email (as a pdf, tif or similar uneditable attachment) to admin@opol.org.uk.

Date Name of Guarantor:.....

Address of By
Guarantor **Officer of the Guarantor**
.....

Name
Typed or Printed

Title
Typed or Printed

SCHEDULE TO FORM FR-3/FR-3G

THIS DEED OF GUARANTEE dated [●]

IS GRANTED BY:

- (1) [●], (registered in [England] with number [●]) whose registered office is at [●] (the ‘Guarantor’);

IN FAVOUR OF:

- (2) [●], (registered in [England] with number [●]) whose registered office is at [●] (the ‘Operator’);

AND:

- (3) **The Offshore Pollution Liability Association Limited**, (registered in England with number 01182588) whose registered office is at [●] (the ‘Association’) for and on behalf of its members from time to time;

(the Operator and the Association together referred to in this Deed as the ‘Beneficiaries’).

BACKGROUND

The Operator has entered into an agreement known as the Offshore Pollution Liability Agreement dated 4th September 1974 (‘OPOL’) and the Guarantor has agreed to assist the Operator in establishing its financial responsibility with respect to the performance of its obligations under OPOL as required by the Association.

IT IS AGREED as follows:

1 Definitions and interpretation

1.1 Definitions

In this Deed:

Expiry Date means[●];

Guaranteed Obligations means all money and liabilities now or hereafter due, owing or incurred by the Operator in respect of claims for Remedial Measures and/or Pollution Damage arising from an Incident occurring during the period the guarantee is in force, as each of those terms are defined in OPOL;

Insolvency Event means in relation to any Party:

- (a) any resolution being passed or order being made for the winding-up, dissolution, administration or reorganisation of such Party;
- (b) any composition, compromise, assignment or arrangement being made with any of its creditors;
- (c) the appointment of any liquidator, administrator, receiver, administrative receiver, compulsory manager or other similar office in respect of the Party or any of its assets; or
- (d) any analogous procedure or step being taken in any jurisdiction;

OPOL has the meaning given to that term in the background recitals above;

Party means a party to this Deed and includes each of the Beneficiaries; and

Tax Deduction means a deduction or withholding for or on account of tax from a payment under this Deed.

1.2 Interpretation

- (a) Unless otherwise defined in this Deed or the context otherwise requires, terms defined in, or whose interpretation is provided for in, OPOL shall have the same meaning when used in this Deed.
- (b) Unless a contrary indication appears, a reference in this Deed to:
 - (i) the Association, any other Party or any other person shall be construed so as to include, where relevant, its successors in title, permitted assigns and permitted transferees;
 - (ii) clauses are references to clauses of this Deed;
 - (iii) OPOL or any other agreement or instrument is a reference to OPOL or other document as amended, novated, supplemented or restated (however fundamentally) or replaced from time to time; and
 - (iv) a provision of law is a reference to a provision of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced whether before or after the date of this Deed.
- (c) Clause and schedule headings are for ease of reference only.
- (d) Words importing the plural shall include the singular and vice versa.

1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Deed a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

- (b) No amendment or change shall be made to this Deed by the Guarantor or the Operator without the prior written consent of the Association.
- (c) The consent of any person who is not a Party is not required to rescind or vary this Deed.

1.4 Deed

This Deed is intended to take effect as a deed notwithstanding the fact that the Guarantor may only execute this Deed under hand.

2 Guarantee and Indemnity

2.1 Guarantee and indemnity

Subject to clause 2.6, the Guarantor irrevocably and unconditionally:

- (a) guarantees to each of the Beneficiaries the punctual performance by the Operator of the Guaranteed Obligations;
- (b) undertakes to the Operator to make payment of the Guaranteed Obligations to or on behalf of the Operator immediately upon written demand for the payment of Guaranteed Obligations from the Operator;
- (c) undertakes to the Association that whenever the Operator does not pay the Guaranteed Obligations when due under OPOL the Guarantor shall immediately on written demand from the Association pay the amount of such Guaranteed Obligations to or at the direction of the Association as if it was the principal obligor; and
- (d) agrees with each Beneficiary that if, for any reason, any amount claimed by any Beneficiary under this clause 2 is not recoverable on the basis of a guarantee, it will be liable as a principal debtor and primary obligor to

indemnify the Beneficiaries against any cost, loss or liability it incurs as a result of not paying such amount on the date when it was due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this clause 2 if the amount claimed had been recoverable on the basis of a guarantee.

2.2 Continuing guarantee

This Deed is a continuing guarantee and will extend to the ultimate balance of the Guaranteed Obligations, regardless of any intermediate payment or discharge in whole or in part.

2.3 Reinstatement

If any discharge, release or arrangement is made by any Beneficiary in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this clause 2 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

2.4 Waiver of defences

The obligations of the Guarantor under this Deed will not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to it or to any Beneficiary) including:

- (a) any release, time, waiver or consent granted to, or composition with, any person;
- (b) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over the assets of any person or any non-presentation or non-

observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

- (c) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Operator, the Guarantor or any other person;
- (d) any amendment (however fundamental) or replacement of this Deed, OPOL or any other agreement or security;
- (e) any unenforceability, illegality or invalidity of any obligation of any person under this Deed, OPOL or any other document; or
- (f) any insolvency or similar proceedings.

2.5 Guarantor intent

Without prejudice to the generality of clause 2.4 the Guarantor expressly confirms that it intends that the guarantee set out in this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of OPOL and/or the Guaranteed Obligations.

2.6 Recourse

- (a) The Guarantor shall not be obliged to make payment to or at the direction of the Association of Guaranteed Obligations demanded by the Association under clause 2.1 to the extent that such demand relates to Guaranteed Obligations that the Guarantor has already paid to the Operator.
- (b) The Association shall not make demand on the Guarantor pursuant to clause 2.1 unless:

- (i) the Association believes, in its reasonable opinion, that demand must be made on the Guarantor urgently in order to preserve the Association's rights under this Deed;
 - (ii) an Insolvency Event has occurred in respect of the Operator or the Guarantor; or
 - (iii) the Operator has failed to meet its obligations under clause IV of OPOL.
- (c) The Operator may make demand on the Guarantor for payment of the Guaranteed Obligations at any time following an Incident.

2.7 Deferral of Guarantor's rights

Until all the Guaranteed Obligations have been irrevocably paid in full and unless the Association otherwise directs, the Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations under OPOL or by reason of any amount being payable, or liability arising, under this clause 2:

- (a) to be indemnified by the Operator;
- (b) to bring legal or other proceedings for an order requiring the Operator to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under clause 2.1 (Guarantee and Indemnity);
- (c) to exercise any right of set-off against the Operator; and/or
- (d) to claim or prove as a creditor of the Operator in competition with the Association.

If the Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to

enable all the Guaranteed Obligations to be paid to the Beneficiaries in full on trust for the Beneficiaries and shall promptly pay or transfer the same to the Beneficiaries for application towards the Guaranteed Obligations.

2.8 Additional security

This Deed is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any of the Beneficiaries.

3 Representations

The Guarantor represents and warrants to each of the Beneficiaries that:

- (a) it is duly constituted and validly existing under the law of its jurisdiction of constitution;
- (b) it has the power to own its assets and carry on its business as it is being conducted;
- (c) the obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations;
- (d) the entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not conflict with:
 - (i) any law or regulation, or judicial or official order, applicable to it;
 - (ii) its constitutional documents; or
 - (iii) any agreement or instrument binding upon it or any of its assets;
- (e) it is not in default under any agreement to which it is a party to an extent or in a manner which might have a material adverse effect on its ability to perform its obligations under this Deed;

- (f) it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed;
- (g) no limit on its powers will be exceeded as a result of the giving of the guarantee and indemnity contemplated by this Deed;
- (h) all authorisations required or desirable:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed; and
 - (ii) to make this Deed admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect; and

- (i) no Insolvency Event has occurred and is continuing in respect of it;
- (j) the choice of English law as the governing law of this Deed will be recognised and enforced in its jurisdiction of constitution;
- (k) any judgment obtained in England in relation to this Deed will be recognised and enforced in its jurisdiction of constitution;
- (l) it is not required under the law of its jurisdiction of constitution to make any deduction for or on account of tax from any payment it may make under this Deed;
- (m) under the law of its jurisdiction of constitution it is not necessary that this Deed be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to this Deed or the transactions contemplated by this Deed; and

- (n) it has one or more of the following credit or financial strength ratings: “A-” or higher from Standard & Poor’s; “A-” or higher from A. M. Best; “A3” or higher from Moody’s; “A” or higher from Fitch; and/or the equivalent from another internationally recognised credit rating agency acceptable to the Association; and if it ceases to satisfy such requirement, it shall promptly notify the Operator and the Association of the same.

4 Payment Mechanics

- 4.1** All payments by the Guarantor under this Deed shall be made for value on the due date at the time and in the currency in which the Guaranteed Obligations are due and payable.
- 4.2** Payment shall be made to such account which the relevant Beneficiary specifies.
- 4.3** All payments to be made by the Guarantor under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

5 Tax gross-up

- 5.1** The Guarantor shall make all payments to be made by it under this Deed without any Tax Deduction, unless a Tax Deduction is required by law.
- 5.2** If a Tax Deduction is required by law 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 Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

6 Currency clauses

If a payment is made to a Beneficiary under this Deed in a currency (‘Payment Currency’) other than the currency in which it is expressed to be payable (‘Contractual Currency’), such Beneficiary may convert that payment into the Contractual Currency

at the rate at which it (acting reasonably and in good faith) is able to purchase the Contractual Currency with the Payment Currency on or around the date of receipt of the payment and to the extent that the converted amount of the payment falls short of the amount due and payable the Guarantor will remain liable for such shortfall and such shortfall shall form part of the Guaranteed Obligations.

7 Costs and expenses

The Guarantor shall pay to the relevant Beneficiary the amount of all costs and expenses (including legal fees, stamp duties and any value added tax) incurred by such Beneficiary in connection with the enforcement of, or preservation of, any rights under, this Deed on a full indemnity basis.

8 Partial invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

9 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of a Beneficiary, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

10 Notices

- 10.1** All notices to be given to the Association in connection with this Deed shall be sent by email (as a pdf, tif or similar uneditable attachment) to admin@opol.org.uk.

10.2 All demands and notices to be given to the Guarantor in connection with this Deed shall be given in writing to the Guarantor at
..... marked for the attention of.....

10.3 All demands and notices to be given to the Operator in connection with this guarantee shall be given in writing to the Operator at
..... marked for the attention of.....

11 English language

Any notice or other document given or provided under or in connection with this Deed must be in English.

12 Counterparts

This Deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

13 Termination

13.1 The Guarantor's liability under the guarantee in clause 2 shall attach only in respect of Incidents occurring during the period the guarantee is in force. In no event shall the Guarantor's liability under the guarantee in clause 2 exceed the amount of Operator's liability in respect of the Guaranteed Obligations under OPOL.

13.2 This Deed shall terminate at 2400 hours G.M.T. on the earliest of the following dates:

- (a) the Expiry Date;
- (b) the date on which Operator ceases to be a Party, as that term is defined in OPOL, to OPOL;

- (c) the date 30 days after receipt by the Association of written notice that Guarantor has elected to terminate this Deed; or
- (d) the date substitute evidence of financial responsibility has been accepted by the Association,

provided, however, that if Guaranteed Obligations exist or subsequently arise as a result of Incidents occurring during the period this Deed is in force, then this Deed shall not terminate with respect to such Guaranteed Obligations until they are discharged.

14 Governing law and jurisdiction

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law. The courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed.

15 Service of process

[Note: to be included if Guarantor is not an English company] [Guarantor irrevocably appoints [●] of [●] as its agent to receive on its behalf in England and Wales service of any proceedings. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by Guarantor) and shall be valid until such time as the Operator has received prior written notice from Guarantor that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, Guarantor shall forthwith appoint a substitute acceptable to the Operator and deliver to the Operator the new agent's name, and address within England and Wales.]

THIS DEED has been entered into on the date stated at the beginning of this Deed and shall be effective from _____ hours G.M.T on that date.

THE GUARANTOR

Executed as a deed by [●])
[acting by two directors, by a director and) Director
its secretary or by a director whose)
execution of this Deed has been witnessed])
) Director/Secretary