

Supporting Entity Guarantee Template for a Single Supporting Entity

[This is a template guarantee only and it may be subject to change depending on the circumstances of the Project. Please liaise with the MARA in relation to the specific details of any proposed guarantee]

**SUPPORTING ENTITY GUARANTEE AND INDEMNITY
[TEMPLATE]**

BETWEEN

[

]

“Guarantor”

- and -

**MARITIME AREA REGULATORY
AUTHORITY**

“Beneficiary”

THIS DEED OF GUARANTEE AND INDEMNITY (the "**Guarantee**") is made on the [insert day] day of [insert month and year] and entered into by:

- (1) [Insert company name of the guarantor], a company registered in [insert details] with company number [insert company number] and a registered address at [insert address] (the "**Guarantor**");

for the benefit of

- (2) The Maritime Area Regulatory Authority with an address at Menapia House, 2nd Floor, Drinagh Business Park, Drinagh, Co. Wexford, Y35RF29 (the "**Beneficiary**"),

(the Guarantor and Beneficiary together being the "**Parties**").

RECITALS:

- (A) As part of the consenting process for the Project, the Company has made an application for a MAC pursuant to section 79 of the MAP Act;
- (B) In connection with the application for the MAC, the Company intends to rely on the resources of the Guarantor as part of the determination by the Beneficiary as to whether the Company is a fit and proper person pursuant to the requirements of section 74 and Schedule 2 of the MAP Act;
- (C) The Guarantor has agreed to execute this Guarantee for the purposes of guaranteeing the discharge of its obligations in favour of the Beneficiary.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

The following terms shall have the following meanings:

"Business Day" means a day when banks in Dublin are open for normal business;

“Commercial Operation Date” means the date that the Project achieves commercial operation as defined in the MAC;

“the Company” means [insert company name], [*state the relationship of the Company to the Guarantor (if any) e.g. the Company is subsidiary of the Guarantor*] a company incorporated in the Ireland with a registered office at [insert address], and company number [insert company number];

“Effective Date” means the commencement date of the MAC;

“Guarantee” means this guarantee and indemnity;

“Guaranteed Obligations” means the obligations of the Company to pay the Levies to the Beneficiary under the terms of the MAC;

“Levies” means the levy or levies payable to the Beneficiary by the Company under the terms of the MAC from the Effective Date to Commercial Operation Date;

“MAC” means the maritime area consent for the Project, reference no. [*insert MAC no.*];

“MAP Act” means the Maritime Area Planning Act 2021;

“Payment Demand” has the meaning as set out in clause 4.

“Project” means [*insert details of the project the subject of the MAC application*]

1.2. Interpretation

Except to the extent that the context requires otherwise, any reference in this Guarantee to:

1.2.1. Headings or sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Guarantee;

1.2.2. words importing the singular include the plural and vice versa;

1.2.3. a reference to a statute or statutory provision is a reference to the amendment of a statute or statutory provision, or to a statute or statutory provision as re-enacted from time to time;

1.2.4. a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;

2. GUARANTEE

2.1 The Guarantor guarantees to the Beneficiary whenever the Company does not pay any of the Guaranteed Obligations when due, to pay to the Beneficiary on demand the Guaranteed Obligations as its own liability;

2.2 The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under Clause 2.1, agrees to indemnify the Beneficiary and keep the Beneficiary indemnified in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Beneficiary arising out of, or in connection with, the Levies not being recoverable for any reason or any failure of the Company to perform or discharge any of its obligations or liabilities in respect of the Guaranteed Obligations. The Guarantor's liability under the indemnity in this paragraph 2.2 shall be limited to the total of any Levies which have not been paid by the Company and any interest due to the Beneficiary under clause 8.1 and any costs due to Beneficiary under clause 9.1;

2.3 This Guarantee shall commence on the Effective Date.

3. PAYMENT DEMAND

3.1. Demands made by the Beneficiary to the Guarantor for payment under this Guarantee shall be made:

3.1.1. in writing;

3.1.2. signed by a representative of the Beneficiary; and

3.1.3. delivered to the Guarantor in accordance with clause 11 of this Guarantee.

3.2. The Guarantor shall pay or cause to be paid the amount due as set out in the Payment Demand within five (5) Business Days of receipt of such Payment Demand.

3.3. The Beneficiary is permitted to make multiple Payment Demands under this Guarantee.

4. GUARANTEE IS CONTINUING

4.1. This Guarantee is not revocable by the Guarantor and is a continuing guarantee.

5. BENEFICIARY PROTECTIONS

5.1. The liability of the Guarantor under this Guarantee will not be reduced, discharged or otherwise adversely affected by any act, omission, matter or thing (other than as set out in this Guarantee) which, but for this Clause 5, would reduce, release or prejudice any of its obligations or liabilities under this Guarantee (without limitation and whether or not known to it or the Beneficiary) including but not limited to:

5.1.1. any amendment of the MAP Act;

5.1.2. any extension of time granted to the Company by the Beneficiary for the payment of Levies or any grant of concession, compromise, consent,

indulgence, forbearance, delay, forgiveness or waiver to the Company or any arrangements with the Company;

5.1.3. any incapacity or lack of power, authority or legal personality of, or dissolution or change in the members or status of the Company or the Guarantor;

5.1.4. the insolvency, bankruptcy, liquidation, administration or winding up, or any incapacity, limitation, disability, discharge by operation of law or change in the constitution, name or style, of the Company;

6. NO RECOURSE

6.1. The Guarantor waives any right it may have of first requiring the Beneficiary to proceed against or enforce any other rights or security, or make or file any claim or proof in a winding up or dissolution of any company before delivering a Payment Demand to the Guarantor under this Guarantee.

7. DEFERRAL OF GUARANTOR'S RIGHTS

7.1. Until the Levies payable by the Company in respect of the Guaranteed Obligations have been irrevocably paid in full, the Guarantor shall not, by virtue of any payment made by it under this Guarantee or otherwise:

7.1.1. exercise any right conferred on it on account of this Guarantee (including any right to be indemnified or reimbursed and any right of set-off or counterclaim) against the Company;

7.1.2. be entitled to any right of contribution in respect of any payment made or moneys received on account of the Guarantor's liability under this Guarantee;

7.1.3. bring legal or other proceedings for an order requiring the Company to make any payment, or perform any obligation in respect of which the Guarantor has given this Guarantee under clause 2.1;

7.1.4. claim or prove as a creditor of the Company in competition with the Beneficiary.

8. INTEREST

8.1. The Guarantor shall pay interest to the Beneficiary after, as well as before judgment, at the prescribed rate under section 169(2) of the MAP Act or if no such rate stands prescribed, at the rate of 2 per cent per annum on all sums demanded under this Guarantee from the date of demand by the Beneficiary 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.

8.2. The Beneficiary shall not be entitled to recover any amount in respect of interest under both this Guarantee and any arrangements entered into between the Company and the Beneficiary in respect of any failure by the Company to make any payment in respect of the Guaranteed Obligations.

9. COSTS

9.1 The Guarantor shall, pay to, or reimburse, the Beneficiary, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Beneficiary in connection with:

9.1.1 the negotiation, preparation, execution and delivery of this Guarantee;

9.1.2 the preservation, exercise or enforcement of any rights under or in connection with this Guarantee or any attempt to do so;

9.1.3 any amendment, extension, waiver or consent (or any proposal for any of these) under or in connection with this Guarantee;

9.1.4 any discharge or release of this Guarantee; or

9.1.5 any stamping or registration of this Guarantee.

10 REPRESENTATIONS AND WARRANTIES OF GUARANTOR

10.1 The Guarantor makes the representations and warranties set out in this Clause 10 to the Beneficiary on the date of this Guarantee and the representations and warranties contained in this Clause 10 are deemed to be repeated by the Guarantor on each day whilst this Guarantee is still subsisting:

10.1.1 The Guarantor is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation, possesses the capacity to sue and be sued in its own name and has the power to carry on its business as it is being conducted and to own its property and other assets;

10.1.2 The Guarantor has the power to enter into, deliver and perform its obligations under, and has taken all necessary actions to authorise its entry into, delivery and performance of, this Guarantee. No limit on its powers will be exceeded as a result of entering into this Guarantee;

10.1.3 The entry into, delivery and performance of the obligations in this Guarantee do not and will not contravene or conflict with any law or regulation or judicial or official order applicable to it, the Guarantor's constitutional documents, or any agreement or instrument binding on the Guarantor or its assets.

- 10.1.4 The Guarantor has taken all necessary corporate, shareholder and other actions, consents and authorisations, Board resolutions to authorise the execution, delivery and performance of this Guarantee;
- 10.1.5 Subject to any general principles of law limiting obligations, the Guarantor's obligations under this Guarantee are legal, valid, binding and enforceable;
- 10.1.6 The Guarantor has not taken any corporate action nor, as far as it is aware, have any legal proceedings or other step been taken or any meeting been convened in relation to its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee, examiner, interim examiner or similar officer in relation to any of its assets or revenues;
- 10.1.7 None of the Guarantor's assets is entitled to immunity on any grounds from any legal action or proceeding (including, without limitation, suit, attachment prior to judgment, execution or other enforcement);
- 10.1.8 No event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination thereof, would constitute) a default or termination event (however described) under any agreement or instrument which is binding on the Guarantor or to which any of its assets is subject which has or is likely to have a material adverse effect on the Guarantor's ability to perform its obligations under this Guarantee;
- 10.1.9 The Guarantor's payment obligations under this Guarantee rank at least pari passu with all existing and future unsecured and unsubordinated obligations, except for those mandatorily preferred by law applying to companies generally;

- 10.1.20 The choice of the laws of Ireland as the governing law of this Guarantee will be recognised and enforced in the Guarantor's jurisdiction of incorporation and any judgment obtained in Ireland in relation to this Guarantee will be recognised and enforced in that jurisdiction;
- 10.1.21 The Guarantor is not required under the law of its jurisdiction of incorporation to make any deduction for, or on account of, tax from any payment it may make under this Guarantee.
- 10.1.22 Under the law of the Guarantor's jurisdiction of incorporation it is not necessary to file, record or enrol this Guarantee with any court or other authority in that jurisdiction or pay any stamp, registration or similar taxes in relation to this Guarantee.

11. NOTICE

- 11.1 Any notice to be given by the Beneficiary to the Guarantor under this Guarantee shall either be sent by registered post or by email.
- 11.2 Where the notice is sent by registered post, the notice shall be furnished or sent to the address of the Guarantor as set out below:

Address: *[insert address of Guarantor]*

Attn: *[insert details of person to whom the notice is to be addressed]*

- 11.3 Where the notice is delivered by email, it shall be issued to the e-mail address of the Guarantor as set out below:

Email address: *[insert email address of Guarantor]*

Attn: *[insert details to whom the notice is to be addressed]*

- 11.4 All notices shall be deemed to have been served as follows:

- 11.4.1 if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of An Post

(and not returned undelivered);

11.4.2 if communicated by email, on the next calendar day following transmission.

12 SEVERANCE

12.1 If any provision of this Guarantee is or becomes or is declared invalid, unenforceable or illegal by the Courts of Ireland that provision shall be severed and the remainder of this Guarantee shall remain in full force and effect.

13 ASSIGNMENT

13.1 The Guarantor is not entitled to assign any rights or novate or transfer the Guaranteed Obligations or other rights or obligations under this Guarantee without the prior written approval of the Beneficiary.

14 GOVERNING LAW AND JURISDICTION

14.1 Governing Law

This Guarantee and any dispute or claim arising out of or in connection with this Guarantee or its subject matter or formation shall be governed by and construed in accordance with the laws of Ireland.

14.2 Jurisdiction

The Parties irrevocably agree that, subject as provided below, the Courts of Ireland shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this Guarantee.

IN WITNESS whereof the Parties hereto have signed, sealed and delivered this
Guarantee as a Deed

**PRESENT WHEN THE
COMMON SEAL OF THE
GUARANTOR WAS AFFIXED
HERETO:**

Print name

Position held

PRESENT when the **SEAL** of the
MARITIME AREA REGULATORY AUTHORITY

was affixed hereto

and was authenticated by the signature of:-

Print name

Position Held

And was authenticated by the signature of: -

Print name

Position Held

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