

**HELP TO BUY: MORTGAGE GUARANTEE SCHEME
DEED OF GUARANTEE**

DATED 3 OCTOBER 2013

HER MAJESTY'S TREASURY

CONTENTS

Clause	Page
1. Interpretation.....	1
2. Commencement and Term.....	2
3. Guarantee.....	2
4. Period Guarantee is open to New Business	2
5. Duration of Guarantee in respect of Individual Loans.....	3
6. Cap on Liability to Lender.....	3
7. Assignment	4
8. Termination.....	4
9. Amendments to Terms.....	4
10. Amendments and Alterations by Agreement.....	4
11. Invalidity and Severability.....	4
12. Waiver	4
13. No Partnership	5
14. Further Assurance.....	5
15. Costs	5
 Schedule	
1. Deed of Adherence	6

THIS DEED is made on **3 OCTOBER 2013**

BY:

- (1) **THE COMMISSIONERS OF HER MAJESTY'S TREASURY** ("the Treasury");

IN FAVOUR OF:

- (2) **EACH ELIGIBLE LENDER** which has entered into a Deed of Adherence with the Treasury (each "a Lender").

WHEREAS:

- (A) The Help to Buy: mortgage guarantee scheme ("the Scheme") is an arrangement between the Treasury and mortgage lenders to promote the wider availability of 80-95% loan-to-value mortgage lending in the residential property market in the United Kingdom.
- (B) The Treasury have agreed to guarantee each Lender against losses incurred by it and its other Lending Group Members in relation to defaults under eligible loans to the extent set out in this Deed of Guarantee, the Deed of Adherence and the Scheme Rules.

NOW THIS DEED OF GUARANTEE WITNESSES as follows:

1. INTERPRETATION

1.1 In this Deed of Guarantee (including the recitals):

- (a) "BIPRU" means the Prudential Regulation Authority's prudential sourcebook for banks, building societies and investment firms as amended, re-enacted or replaced from time to time (including, without limitation, pursuant to CRD4);
- (b) "Deed of Adherence" in relation to a Lender means a deed of adherence in or substantially in the form set out in the Schedule (or in such other form as the Treasury may agree) entered into between the Treasury and such Lender (as the same may be amended from time to time) under which the Lender agrees to participate in the Scheme and to comply with, to be bound by, and to be entitled to the benefit of, the Scheme Rules and this Deed of Guarantee;
- (c) "Scheme Rules" means the rules governing the Scheme dated 3 October 2013 (as the same may be amended from time to time); and

- (d) “this Guarantee” in relation to a Lender means, together, this Deed of Guarantee (as the same may be amended from time to time) and the Deed of Adherence relating to such Lender.

1.2 In this Guarantee (unless an express provision or the context requires otherwise):

- (a) words or phrases used which are defined, construed or used in the Scheme Rules have the same meaning or construction as in the Scheme Rules;
- (b) provisions in the Scheme Rules which are expressed to be applicable to this Guarantee shall be so applicable as if set out in this Guarantee;
- (c) references to paragraphs are to paragraphs of this Deed of Guarantee and references to the Schedule are to the Schedule to this Deed of Guarantee; and
- (d) the headings and contents table are for convenience only and do not affect its interpretation.

2. COMMENCEMENT AND TERM

2.1 In relation to each Lender, this Guarantee comes into effect on the Commencement Date relating to that Lender and terminates on the Termination Date relating to that Lender.

3. GUARANTEE

3.1 The Treasury irrevocably guarantee to each Lender that they will pay to it all Claims in respect of Recoverable Losses when the same become due for payment in accordance with the terms of this Guarantee and the Scheme Rules.

3.2 By executing its Deed of Adherence, each Lender shall be deemed to agree to comply with, and to be bound by, the provisions of this Guarantee and the Scheme Rules that are expressed to be applicable to or binding on such Lender.

4. PERIOD GUARANTEE IS OPEN TO NEW BUSINESS

4.1 In relation to each Lender (but without prejudice to rule 3.1 or rule 10.3(b) of the Scheme Rules), the Treasury shall not be liable under this Guarantee in relation to Eligible Loans in respect of which the Date of Completion is before the Effective Date or on or after the Closure Date, and accordingly shall have no liability in respect of any Losses incurred by the Lender or its other Lending Group Members in relation to such Loans.

5. DURATION OF GUARANTEE IN RESPECT OF INDIVIDUAL LOANS

- 5.1 The Treasury's liability under this Guarantee in relation to each Eligible Loan ceases:
- (a) seven (7) years after the Date of Completion in respect of the Loan; or
 - (b) (if earlier) on the date on which the Principal Balance of the Loan is reduced to zero.
- 5.2 The Treasury are accordingly liable, subject to the terms of this Guarantee and the Scheme Rules, for all Recoverable Losses in respect of which a Claim has been validly made before that time.

6. CAP ON LIABILITY TO LENDER

- 6.1 In relation to a Lender which is an IRB Lender, the Treasury's maximum liability to the Lender under this Guarantee is limited to nine per cent. (9%) of the aggregate sum of the Original Principal Balances of all Eligible Loans granted by the Lender or its other Lending Group Members before the Closure Date which are subject to this Guarantee.
- 6.2 If the sum referred to in paragraph 6.1 is less than the amount in fact paid by the Treasury to the Lender in settlement of Claims during the Term, the difference shall be owed by the Lender as a debt due to the Treasury. The Lender shall pay that sum to the Treasury within twenty (20) Business Days of the Closure Date. If payment is not made by that date then the Lender shall be obliged to pay interest to the Treasury on the outstanding debt at the Specified Rate for the time being from such twentieth (20th) Business Day to the date of actual payment.
- 6.3 For the purposes of paragraph 6.1, a Lender is an IRB Lender if it has permission under BIPRU and any applicable capital requirements, rules and regulations to apply an internal ratings based approach to determine its minimum capital requirements for residential mortgage loans in the United Kingdom for regulatory purposes.
- 6.4 Without prejudice to paragraph 6.1, the Treasury may (subject to prior consultation with the Lender) at any time notify the Lender that the Treasury's maximum liability to the Lender under this Guarantee shall be limited to the amount specified in such notice. Such limitation shall take effect on the twentieth (20th) Business Day following the date of such notice, but shall not affect the liability of the Treasury under this Guarantee in relation to Eligible Loans in respect of which the Date of Completion is before such twentieth (20th) Business Day.

7. ASSIGNMENT

- 7.1 In relation to each Lender, this Guarantee is binding on the Treasury and such Lender and their successors and permitted assigns. Such Lender may not assign or transfer the benefit of this Guarantee to any other person, save in accordance with rule 5.6 of the Scheme Rules.

8. TERMINATION

- 8.1 Without prejudice to paragraph 5, the Treasury's liability to a Lender under this Guarantee shall terminate on the Termination Date relating to that Lender.

9. AMENDMENTS TO TERMS

- 9.1 The Treasury may amend or supplement this Guarantee or the Scheme Rules at any time at their discretion in accordance with the provisions set out in the Scheme Rules.

10. AMENDMENTS AND ALTERATIONS BY AGREEMENT

- 10.1 Without prejudice to paragraph 9, this Guarantee or the Scheme Rules may be changed, altered or amended in relation to each Lender as the Treasury and such Lender may agree, provided such amendment is evidenced in writing and executed by both of them.

11. INVALIDITY AND SEVERABILITY

- 11.1 If any part of this Guarantee or the Scheme Rules proves to be invalid, illegal or unenforceable, in whole or in part, the other provisions of this Guarantee or the Scheme Rules (as the case may be) shall nevertheless continue in full force and effect.
- 11.2 If any invalid, illegal or unenforceable provision in this Guarantee or the Scheme Rules would be valid, legal and enforceable if some part of it were modified or deleted, the provision will apply with whatever modifications or deletions are necessary to make it valid, legal or enforceable.

12. WAIVER

- 12.1 Delay in exercising, or failure to exercise, any right or remedy in connection with this Guarantee or the Scheme Rules shall not operate as a waiver of that right or remedy. The waiver of a right to require compliance with any provision of this Guarantee or the Scheme Rules in any instance shall not operate as a waiver of any further exercise or enforcement of that right and the waiver of any breach shall not operate as a waiver of any subsequent breach.

12.2 No waiver in connection with this Guarantee or the Scheme Rules (including without limitation a waiver by the Treasury pursuant to rule 28.9 of the Scheme Rules) shall, in any event, be effective unless it is in writing, refers expressly to the paragraph or rule under which such right or remedy is created, is duly signed by or on behalf of the party granting it and is communicated to the other party in accordance with rule 22 of the Scheme Rules.

13. NO PARTNERSHIP

13.1 Nothing in this Guarantee or the Scheme Rules is to be construed as establishing or implying any partnership or joint venture between the Treasury and any Lender, or as appointing either of them as the agent or employee of the other. Neither the Treasury nor a Lender shall hold out the other as its or their partner or joint venturer. Except, and to the extent, that this Guarantee expressly states otherwise, neither the Treasury nor a Lender may incur any expenses or negotiate on behalf of the other or commit the other in any way to any person without that other's prior written consent.

14. FURTHER ASSURANCE

14.1 Each of the Treasury and the relevant Lender shall do and execute, or arrange and procure for the doing and executing of, any act and/or document reasonably requested of it by the other to implement and give full effect to the terms of this Guarantee and the Scheme Rules.

15. COSTS

15.1 Each Lender shall bear its own costs and expenses incurred in connection with the preparation, negotiation, completion and implementation of this Guarantee and the Scheme Rules. The Treasury shall be entitled to recoup its costs and expenses in relation to such matters from the Lenders by taking them into account in determining the Commercial Fees payable by the Lenders (and the Treasury shall only be entitled to recoup such costs and expenses from the Lenders to the extent that it does so take them into account).

IN WITNESS whereof this Guarantee has been executed by the Treasury, and is intended to be and is hereby delivered, as a deed poll on the date first above written.

SCHEDULE 1
DEED OF ADHERENCE

THIS DEED OF ADHERENCE is entered into on [date]

BETWEEN:

- (1) **THE COMMISSIONERS OF HER MAJESTY’S TREASURY** (“the Treasury”); and
- (2) **[NAME OF LENDER]** whose registered office is at [address] (“the Lender”).

WHEREAS:

This Deed of Adherence is supplemental to (i) the Deed of Guarantee dated 3 October 2013 and executed by the Treasury (as the same may be amended from time to time) (“the Deed of Guarantee”) in relation to the Treasury’s Help to Buy: mortgage guarantee scheme (“the Scheme”) and (ii) the rules governing the Scheme dated 3 October 2013 (as the same may be amended from time to time) (“the Scheme Rules”).

NOW THIS DEED OF ADHERENCE WITNESSES as follows:

1. INTERPRETATION

1.1 In this Deed (unless an express provision or the context otherwise requires):

- (a) words or phrases which are defined, construed or used in the Scheme Rules or the Deed of Guarantee have the same meaning or construction as in the Scheme Rules or the Deed of Guarantee (as the case may be); and
- (b) provisions in the Scheme Rules or the Deed of Guarantee which are expressed to be applicable to this Deed of Adherence shall be so applicable as if set out in this Deed of Adherence.

1.2 [Rule 30 of the Scheme Rules shall apply in relation to the Lender, and the Effective Date in relation to the Lender shall be [date].] [Rule 30 of the Scheme Rules shall not apply in relation to the Lender.].

1.3 [The Lender shall be the only Lending Group Member.][In addition to the Lender, each of the following entities shall be a Lending Group Member [from the Commencement Date specified opposite its name].][Each of the following entities or divisions of entities shall be a Lending Group Member [from the Commencement Date specified opposite its name]]:

[specify].]

2. AGREEMENT OF THE PARTIES

- 2.1 The Lender agrees to participate in the Scheme in accordance with the Scheme Rules and the Deed of Guarantee.
- 2.2 The Treasury and the Lender agree that, with effect on and from the Effective Date, they shall each comply with, be bound by, and be entitled to the benefit of, the provisions set out in the Scheme Rules and the Deed of Guarantee as fully as if such provisions were set out in full in this Deed.

3. MISCELLANEOUS

- 3.1 A person who is not a party to this Deed of Adherence has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Adherence.
- 3.2 This Deed of Adherence may be entered into by the Parties in any number of separate counterparts, all of which taken together shall constitute one and the same instrument.
- 3.3 A notice or other communication required or permitted to be given pursuant to the Scheme Rules or the Deed of Guarantee shall be sent in accordance with rule 22 of the Scheme Rules. Any notice or communication to the Lender shall be marked for the attention of [title, name].
- 3.4 The Scheme Rules, the Deed of Guarantee and this Deed of Adherence shall be read and construed together as one document.
- 3.5 It is intended by the Parties that this document will take effect as a deed despite the fact that one of the Parties may only execute this document under hand.

IN WITNESS whereof this Deed of Adherence has been executed and delivered as a deed on the date first above written.

EXECUTION:

SIGNED for and on behalf of the Commissioners of Her Majesty's Treasury

By:

Title:

EXECUTED and delivered as a deed by [Name of Lender]

[Execution block]

EXECUTION OF THE DEED OF GUARANTEE

This Deed of Guarantee is executed and delivered as a deed on behalf of Her Majesty's Treasury by:

Gege Ome
.....
Jaird A. Bennett
.....
.....

(Two of the Commissioners of Her Majesty's Treasury)

in the presence of:

(Witness)

Signature: 

Name: 

Address: *1 HORSE GUARDS ROAD, LONDON, SW1A 2HQ*