

BBX Guarantee and Indemnity Terms

AGREED TERMS

Definitions

The following definitions apply in this guarantee:

“**Applicant**” means the person applying for an account on the BBX platform.

“**BBX**” means BBX Exchange Ltd, a limited liability company incorporated in England (company number 06588767) the registered address of which is Unit 3 Churchill Court, 33 Palmerston Road, Bournemouth, Dorset, England, BH1 4HN.

“**BBX International Ltd**” means BBX International Ltd., a company registered in Hong Kong (company number HK10318547), the address of which is at 36/F, Tower Two, Times Square, 1 Matheson Street Causeway Bay, Hong Kong.

“**BBX Management Limited**” means BBX Management Limited, a limited liability company incorporated in England (company number 09023465) the registered address of which is Unit 3 Churchill Court, 33 Palmerston Road, Bournemouth, Dorset, England, BH1 4HN.

“**BBX platform**” means the computerised trading program conducted by BBX throughout the world pursuant to various master franchise and management agreements.

“**Guarantor**” means the person guaranteeing the Guaranteed Obligations under this guarantee.

“**Guaranteed Obligations**” has the meaning given to it in [Clause 1](#) below.

“**Rights**” 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.

“**Security**” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person, or any other agreement having a similar effect.

“**Tax**” 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.

1. The guarantee is and shall at all times be a continuing security and shall cover the ultimate unpaid balance from time to time owing to BBX by the Applicant of any authorised credit lines and any other amounts payable to BBX and/or its associated companies (including, without limitation, BBX International Ltd and BBX Management Limited) by the Applicant from time to time (the “**Guaranteed Obligations**”).
2. 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; or
 - b. any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which BBX may now or after the date of this guarantee have from or against any of the Applicant and any other person in connection with the Guaranteed Obligations; or
 - c. any act or omission by BBX or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against the Applicant or any other person; or
 - 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; or
- e. any grant of time, indulgence, waiver or concession to the Applicant or any other person; or
 - 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 Applicant or any other person; or
 - g. the death or incapacity (whether mental or physical) of the Guarantor, or any notice of his death or incapacity; or
 - h. any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, the Applicant or any other person in connection with the Guaranteed Obligations; or
 - i. any claim or enforcement of payment from the Applicant or any other person; or
 - j. any act or omission which would not have discharged or affected the liability of the Guarantor had he been a principal debtor instead of a guarantor; or
 - k. any other act or omission except an express written release of the Guarantor by BBX.
3. BBX 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 Applicant or any other person; or
 - b. to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Applicant or any other person; or
 - c. to make demand, enforce or seek to enforce any claim, right or remedy against the Applicant or any other person.
 4. The Guarantor warrants to BBX that he has not taken or received, and shall not take, exercise or receive the benefit of any Rights from or against the Applicant, 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 BBX for application in or towards the discharge of the Guaranteed Obligations under this guarantee; and
 - b. on demand by BBX, the Guarantor shall promptly transfer, assign or pay to BBX all other Rights and all monies from time to time held on trust by the Guarantor under this Clause 4.
 5. 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 BBX from time to time for the discharge and performance of the Applicant of the Guaranteed Obligations.
 6. The Guarantor shall pay interest to BBX after as well as before judgment at the annual rate which is 3.5% above the base rate of Barclays Bank plc on all sums demanded under this guarantee from the date of demand by BBX 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.
 7. Interest under Clause 6 shall accrue on a day-to-day basis calculated by BBX upon such terms as BBX may from time to time determine and shall be compounded on the last Business Day of each month.
 8. BBX shall not be entitled to recover any amount in respect of interest under both this guarantee and any arrangements entered into between the Applicant and BBX in respect of any failure by the Applicant to make any payment in respect of the Guaranteed Obligations.
 9. The Guarantor represents and warrants that the Warranties are true and correct on the date of this guarantee.
 10. The Warranties are deemed to be made by the Guarantor by reference to the facts and

circumstances then existing on each day whilst this guarantee remains in full force and effect.

11. BBX may place to the credit of a suspense account any monies received under or in connection with this guarantee in order to preserve the rights of BBX to prove for the full amount of all its claims against the Applicant or any other person in respect of the Guaranteed Obligations.
12. BBX may at any time and from time to time apply all or any monies held in any suspense account in or towards satisfaction of any of the monies, obligations and liabilities the subject of this guarantee as BBX, in its absolute discretion, may conclusively determine.
13. If this guarantee ceases for any reason whatsoever to be continuing, BBX may open a new account or accounts in the name of the Applicant.
14. If BBX does not open a new account or accounts pursuant to Clause 13, it shall nevertheless be treated as if it had done so at the time that this guarantee ceased to be continuing whether by termination, calling in or otherwise, in relation to the Applicant.
15. As from the time of opening or deemed opening of a new account or accounts, all payments made to BBX by or on behalf of the Applicant 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.
16. Any release, discharge or settlement between the Guarantor and BBX in relation to this guarantee shall be conditional on no right, Security, disposition or payment to BBX by the Guarantor, the Applicant 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.
17. If any right, Security, disposition or payment referred to in Clause 16 is avoided, set aside or ordered to be refunded, BBX 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.
18. All sums payable by the Guarantor under this guarantee shall be paid in full to BBX 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.
19. 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.
20. The Guarantor shall promptly deliver or procure delivery to BBX of all receipts issued to him evidencing each deduction or withholding which he has made.
21. The Guarantor shall not and may not direct the application by BBX of any sums received by BBX from the Guarantor under, or pursuant to, any of the terms of this guarantee.
22. BBX may at any time set off any liability of the Guarantor to BBX against any liability of BBX to the Guarantor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this guarantee. If the liabilities to be set off are expressed in different currencies, BBX may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by BBX of its rights under this Clause 22 shall not limit or affect any other rights or remedies available to it under this guarantee or otherwise.

23. BBX is not obliged to exercise its rights under Clause 22. If, however, it does exercise those rights it must promptly notify the Guarantor of the set-off that has been made.
24. Any certificate, determination or notification by BBX 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.
25. No amendment of this guarantee shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).
26. A waiver of any right or remedy under this guarantee or by law, or any consent given under this guarantee, is only effective if given in writing and signed by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. 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.
27. A failure or delay by a party to exercise any right or remedy provided under this guarantee or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this guarantee. No single or partial exercise of any right or remedy provided under this guarantee or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this guarantee by BBX shall be effective unless it is in writing and signed.
28. The rights and remedies provided under this guarantee are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.
29. If any provision (or part of a provision) of this guarantee is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this guarantee.
30. Except as expressly provided elsewhere in this guarantee, a person who is not a party to this guarantee shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this guarantee. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act. BBX Management Limited and BBX International Ltd are specifically granted the right to enforce any of BBX's rights under this guarantee as if they were BBX itself.
31. The rights of the parties to rescind, terminate or agree any amendment or waiver under this guarantee are not subject to the consent of any other person.
32. This guarantee may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one guarantee.
33. Transmission of an executed counterpart of this guarantee (but for the avoidance of doubt not just a signature page) or the executed signature page of a counterpart of this guarantee by e-mail or similar electronic means (in PDF, JPEG or other similar readable format) shall take effect as an executed counterpart of this guarantee. If either method of delivery is adopted, without prejudice to the validity of the guarantee thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
34. No counterpart shall be effective until each party has executed at least one counterpart.
35. This guarantee and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and

construed in accordance with, the law of England and Wales.

36. The Guarantor irrevocably consents to any process in any proceedings under Clause 37 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.
37. Each party irrevocably agrees that, subject as provided below any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this guarantee or its subject matter or formation shall be resolved via arbitration in accordance with the Rules of the Arbitration Service available here: <https://www.bbxuk.com/wp-content/uploads/documents/BBX-UK-Arbitration-Service.pdf>, the parties having first used their best endeavours to resolve the dispute or claim through negotiation in good faith. Nothing in this clause shall limit the right of BBX (but not the Guarantor) to take proceedings against the Guarantor in any court of competent jurisdiction, nor shall the taking of proceedings by BBX 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.

THE SCHEDULE REPRESENTATIONS AND WARRANTIES

1. CAPACITY

1.1 The Guarantor has the capacity to execute, deliver and perform his obligations under this guarantee and the transactions contemplated by them.

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

1.3 The court has not made an order or appointed a deputy under section 16 of the Mental Capacity Act 2005 in respect of the Guarantor.

2. DIRECTOR

2.1 The Guarantor is a director of the Applicant.

3. NON-CONTRAVENTION

3.1 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 assets, or any applicable law or regulation.

4. AUTHORISATIONS

4.1 The Guarantor has taken all necessary action and obtained all required or desirable consents to enable him to execute, deliver and perform his obligations under this guarantee and to make this guarantee admissible in evidence in England and Wales. Any such authorisations are in full force and effect.

5. BINDING OBLIGATIONS

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

6. LITIGATION

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

7. ASSETS NOT IMMUNE TO ACTION

7.1 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).

8. NO DEFAULT

8.1 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 assets are subject, which might have a material adverse effect on the Guarantor's ability to perform his obligations under this guarantee.

9. RANKING OF OBLIGATIONS

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

10. BANKRUPTCY AND ANALOGOUS EVENTS

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

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

10.3 The Guarantor is not the subject of a bankruptcy petition, application or order.

10.4 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.

10.5 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.

10.6 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 10.1 to paragraph 10.5 (inclusive).

11. GOVERNING LAW

11.1 The choice of English law as the governing law of this guarantee will be recognised and enforced in the jurisdiction of the Guarantor's domicile and any judgment obtained in England in relation to this guarantee will be recognised and enforced in that jurisdiction.

12. NO TAX DEDUCTIONS

12.1 The Guarantor is not required under the law of his domicile to make any deduction for, or on account of, Tax from any payment he may make under this guarantee.

13. NO REGISTRATION

13.1 It is not necessary that this guarantee be filed, recorded or enrolled with any court or other authority in the jurisdiction of the Guarantor's domicile or that any stamp, registration or similar Tax be paid on or in relation to this guarantee or the transactions contemplated by it.