



Dated:

2018

- (1) WOLVERHAMPTON CITY COUNCIL
- (2) [SCHEME EMPLOYER]
- (3) [ADMISSION BODY]
- (4) [GUARANTOR]

**Guarantee
To accompany an Admission Agreement**

WOLVERHAMPTON CITY COUNCIL

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THIS AGREEMENT is made on the

day of

2018

BETWEEN

- (1) **WOLVERHAMPTON CITY COUNCIL** of Civic Centre, St Peter's Square, Wolverhampton WV1 1RG (the "**Administering Authority**");
- (2) **[[INSERT NAME]]** of [insert address] (the "**Scheme Employer**"); and]
- (3) **[INSERT NAME]** (company number: [insert company number]) whose registered office is at [insert address] (the "**Admission Body**"); and
- (4) **[INSERT NAME]** company number: [insert company number] whose registered office is at [insert address] (the "**Guarantor**").

BACKGROUND

- (A) The Administering Authority is an administering authority within the meaning of the Regulations. It administers and maintains the Fund in accordance with the Regulations, and has the delegated function of making determinations under section 25(5) of the Public Service Pensions Act 2013 in relation to employees of admission bodies.
- (B) **[The Scheme Employer is a Scheme employer within the meaning of the Regulations.] or [The Administering Authority is also a Scheme employer within the meaning of the Regulations and is referred to in this Agreement as the "Scheme Employer" when acting in its capacity as a Scheme employer.]**
- (C) The Admission Body is an admission body within the meaning of paragraph 1 of Part 3 of Schedule 2 to the 2013 Regulations.
- (D) The Guarantor **[funds the Admission Body in whole or part][owns the Admission Body][controls the exercise of the functions of the Admission Body.]**
- (E) Subject to the provision of a guarantee in the form of this Agreement, the Administering Authority **[, the Scheme Employer]** and the Admission Body **[intend to enter][have entered]** into the Admission Agreement.
- (F) At the request of the Admission Body, the Guarantor has agreed to enter into this Agreement as a guarantee in a form acceptable to the Administering Authority **[and the Scheme Employer].**

NOW IT IS AGREED as follows:

1. **INTERPRETATION**

This Clause sets out the definitions and rules of interpretation which apply to the Agreement.
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1.1 The following expressions have the following meanings:

- | | |
|------------------------------|--|
| "2013 Regulations" | the Local Government Pension Scheme Regulations 2013 |
| "Admission Agreement" | the admission agreement [dated [insert date]] made between the Administering Authority [, the Scheme Employer] and the Admission Body to allow the Admission Body to be admitted to the Scheme and to participate in the Fund. |

“Business Day”	any day other than a Saturday or a Sunday or a public or bank holiday in England.
[“Contract”	a contract dated [insert date contract was completed] made between the Scheme Employer and the [Admission Body] to [provide [insert description] services.]
“Fund”	The West Midlands Metropolitan Authorities Pension Fund.
“Payment Notice”	a notice substantially in the form of the notice in the Schedule to this Agreement (Specimen Payment Notice).
“Regulations”	the 2013 Regulations and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.
“Relevant Event”	one of the following ¹ : <ul style="list-style-type: none"> (a) the premature termination of the services provided by the Admission Body [under the Contract] by reason of the insolvency, winding up or liquidation of the Admission Body; (b) the default by the Admission Body in paying any Scheme Liabilities; or (c) the termination of the Admission Agreement.
“Scheme”	the Local Government Pension Scheme established and governed by the Regulations.
[“Scheme Employer”	[insert name of scheme employer] - IF NOT A PARTY]
“Scheme Liabilities”	all employer and employee contributions payments and other sums due from the Admission Body to the Fund under the Admission Agreement or the Regulations (including for the avoidance of doubt any revised contribution(s) or exit payment due when the Admission Agreement ceases to have effect).

- 1.2 Expressions have the same meaning as in the Regulations except where the context otherwise requires.
- 1.3 This Agreement includes a heading and a box at the start of each Clause which outlines its provisions. These are included for information only.
- 1.4 Any reference in this Agreement to any statute or statutory provision includes any subordinate legislation made under it and is to be construed as a reference to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

¹ The Administering Authority (and Scheme Employer where relevant) need to consider the circumstances in which payment under the Agreement becomes payable. This could either be on the premature termination of the provision of the services by reason of the insolvency, winding up or liquidation of the Admission Body as specified in the Administration Regulations or potentially on wider events.

1.5 Words such as “in particular”, “includes” or “including” do not limit the generality of the words preceding them.

2. **CLAIMS AND PAYMENTS**

This Clause sets out the claims and payments which can be made under the Agreement.

2.1 **Failure to pay Scheme Liabilities**

Where, after a Relevant Event has occurred, the Admission Body has failed to pay all Scheme Liabilities (in whole or in part) to the Administering Authority within 20 Business Days of receiving a written demand from the Administering Authority, the Guarantor will pay to the Administering Authority such sum or sums as the Administering Authority claims in respect of the unpaid Scheme Liabilities.

2.2 **Service of Payment Notice and payment**

Any claim by the Administering Authority must be made by the service of a Payment Notice and will be accepted by the Guarantor as conclusive evidence for all purposes that the amount claimed is due to the Administering Authority. The Guarantor must pay the sum so demanded within [5]² Business Days of receipt of the Payment Notice.

2.3 **Sums paid by Guarantor**

2.3.1 All sums paid by the Guarantor in accordance with **Clause 2.2** (Service of Payment Notice and Payment) will be held and applied by the Administering Authority for the purpose of paying and discharging the Scheme Liabilities.

2.3.2 Any payment to be made by the Guarantor must be made in sterling free, clear of and without any deduction for taxes, levies, duties, charges, fees and deductions or withholdings for or on account of any set-off or counterclaim.

2.4 **Receipt of payment**

Following any payment by the Guarantor in accordance with **Clause 2.2** (Service of Payment Notice and payment), the Administering Authority must within 6 months of receipt of payment provide the Guarantor with a written account showing how the payment has been applied to the Fund. If any payment exceeds the amount required to discharge the Scheme Liabilities, the Administering Authority must refund any overpayment to the Guarantor.

2.5 **Obligations and liabilities**

The Guarantor’s obligations and liabilities under this Agreement will not be reduced, discharged, impaired or affected by the giving of time or any other indulgence, forgiveness or forbearance by the Administering Authority.

2.6 **Further Payment Notice**

The service of a Payment Notice by the Administering Authority will not preclude the service of any further Payment Notice.

² The number of days referred to in Clause 2.2 should be the same as the number of days referred to in the specimen payment notice in the Schedule.

3. **TERMINATION**

This Clause sets out when the Agreement will terminate.

3.1 **Expiry**

This Agreement will expire (and the obligations and liabilities of the Guarantor will cease and determine absolutely) on the full discharge of the Scheme Liabilities by the Admission Body or the Guarantor.

3.2 **Change in status**

This Agreement will remain in operation notwithstanding any variation made in the terms of the Admission Agreement or the Regulations and notwithstanding the insolvency, winding-up or liquidation of the Admission Body (compulsory or otherwise) or it otherwise ceasing to exist or function. This Agreement and the obligations under it will not be affected by any disclaimer of the Admission Body's contracts or liabilities by a liquidator.

4. **WARRANTY OF AUTHORITY**

This Clause confirms that the Guarantor has the relevant authority power and capacity to enter into this Agreement.

The Guarantor warrants and represents to the Administering Authority that it has all necessary authority, power and capacity to enter into and perform its obligations under this Agreement, that all necessary actions have been taken to enter into this Agreement and those obligations properly and lawfully, and that this Agreement constitutes obligations binding on the Guarantor in accordance with its terms.

5. **NOTICES**

This Clause sets out how any written notices are to be served.

5.1 All notices under this Agreement must be in writing and must be served by being sent by first class post or delivered by hand to, or by being left at, the registered office of the Admission Body or the Guarantor or the headquarter address of the Administering Authority (as the case may be).

5.2 Any notice served in accordance with **Clause 5.1** (Notices) will be deemed to have been served:

5.2.1 if sent by first class post, at [9.00] am on the [second] Business Day after the date of posting; or

5.2.2 in any other case, at the time the notice is delivered to or left at the relevant address;

provided that if a notice would otherwise be deemed to be served before [9.00] am on a Business Day, it will be deemed to be served at [9.00 am] on that day, and if it would otherwise be deemed to be served on a day which is not a Business Day or after [5.00] pm on a Business Day, it will be deemed to be served at [9.00] am on the immediately following Business Day.

6. **ENTIRE AGREEMENT**

This Clause provides that the Agreement sets out the only terms relating to the provision of the guarantee by the Guarantor.

Except where expressly provided, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

7. **AMENDMENT**

This Clause sets out how the Agreement may be amended.

The parties to this Agreement may amend this Agreement by deed (and only by deed).

8. **MORE THAN ONE COUNTERPART**

This Clause sets out how the Agreement can be executed in counterparts.

This Agreement may be executed in any number of counterparts, each of which will constitute an original, but which will together constitute one agreement. This Agreement will not be effective until each party has executed at least one counterpart. The term "counterpart" includes a facsimile or scanned copy of this Agreement.

9. **ASSIGNMENT**

This Clause sets out when the Agreement may be assigned.

9.1 Subject to **Clause 9.2** (Assignment), no party may assign the benefit or burden of the whole or any part of this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed).

9.2 The benefit or burden of this Agreement may be assigned by the Administering Authority to any successor to all or part of its functions as an administering authority under the Regulations as a result of local government re-organisation.

10. **LAWS**

This Clause sets out the legal framework which governs the Agreement.

10.1 This Agreement and any non-contractual obligation arising out of or in connection with it will be governed by and interpreted in accordance with the laws of England and Wales, and the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement (including in relation to any non-contractual obligations).

10.2 The parties do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

EXECUTED as a deed and delivered on the date stated at the beginning of this Agreement.

SCHEDULE

Specimen Payment Notice

To: [Guarantor]

From: **Wolverhampton City Council**

[DATE]

GUARANTEE REF: []

We refer to the Guarantee and certify that a Relevant Event has occurred in relation to the Admission Body.

The sum of [] pounds sterling (£) is properly due in respect of the Scheme Liabilities as defined in the Guarantee. We attach a copy of a certificate signed by our actuary stating that such sum is now due.

We demand payment of the above amount within 5 (five) Business Days of receipt of this notice.

The above amount should be paid to us by transfer to the following account:

Account Number

Sort Code

Account Name

Bank

Bank Address

Duly authorised for and on behalf of **Wolverhampton City Council**

[Drafting note: Confirm execution formalities of each of the parties to the Guarantee Agreement.]

EXECUTED AS A DEED by
WOLVERHAMPTON CITY COUNCIL
[acting in its capacity both as
Administering Authority and
Scheme Employer]
by the affixing of its **COMMON SEAL**
in the presence of:

Authorised Officer

**[THE COMMON SEAL of:
[SCHEME EMPLOYER]**
was affixed in the presence of:

Authorised Officer]

EXECUTED as a deed by **[ADMISSION BODY]**
acting by a director

Director signature:

Name:

in the presence of:

Witness signature:

Name:

Address:

.....

OR

EXECUTED as a deed by **[ADMISSION BODY]**
acting by two directors or by a director and its
company secretary

Director signature:

Name:

**Director / secretary
signature:**

Name:

EXECUTED as a deed by **[GUARANTOR]**
acting by a director

Director signature:

Name:

in the presence of:

Witness signature:

Name:

Address:

.....

OR

EXECUTED as a deed by **[GUARANTOR]** acting by two directors or by a director and its company secretary

Director signature:

Name:

Director / secretary signature:

Name:

DRAFT