

Date:

Admission Body:

Guarantee provider:

[Related contract:]

Guarantee

to accompany an admission agreement



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This Agreement is made on

PARTIES:

- (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**");
- (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[[of] [insert address] (the "**Guarantor**").

BACKGROUND:

- (A) The Administering Authority is an administering authority as defined in the 2013 Regulations. It administers and maintains the Fund, and in that role, it has the delegated function of making determinations under section 25(5) of the Public Service Pensions Act 2013, to allow employees of admission bodies to join the LGPS. [It is also a Scheme employer as defined in the 2013 Regulations, and is referred to in this Agreement as the "Scheme Employer" when acting in its capacity as a Scheme employer.]
- (B) [The Scheme Employer is a Scheme employer as defined in the 2013 Regulations. In that role, it has certain responsibilities under the LGPS Regulations in relation to the participation of the Admission Body in the Fund.]
- (C) The Admission Body is an admission body as defined in the 2013 Regulations. [and was established under an enactment which enables the Guarantor to make financial provision for the Admission Body].
- (D) The Guarantor [funds the Admission Body in whole or part] **or** [owns the Admission Body] **or** [controls the exercise of the functions of the Admission Body] **or** [is the Secretary of State for Housing Communities and Local Government].
- (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].

OPERATIVE PROVISIONS:

1. **INTERPRETATION**

This provision sets out the definitions and rules of interpretation which apply to this agreement.

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] between the Scheme Employer and the [Admission Body] [to provide [insert description] services]]
- “Fund”** The West Midlands Metropolitan Authorities Pension Fund
- “LGPS Regulations”** the 2013 Regulations and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014
- “Payment Notice”** a notice substantially in the form of the notice in the **Schedule** to this Agreement (Specimen Payment Notice)
- “Relevant Event”** one of the following:
- (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) [a 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 LGPS Regulations, including any revised contributions or exit payment due when the Admission Agreement ceases to have effect
- 1.2 Expressions which are not defined in this Agreement but which are used in the LGPS Regulations have the same meaning as in the LGPS Regulations, unless the context requires otherwise.
- 1.3 This Agreement includes a heading at the start of each clause, and also various explanatory notes in boxes. These are included for information only, and do not affect the interpretation of the Agreement.
- 1.4 Any reference in this Agreement to a statute or statutory provision includes any subordinate legislation made under it, and is to be construed as a reference to that statute, statutory provision or subordinate legislation as modified, amended, extended, consolidated, re-enacted or replaced and in force from time to time.
- 1.5 Words such as “in particular”, “includes” or “including” do not limit the meaning of the general words preceding them.
- 1.6 References to “in writing” or “written” [include e-mail (except in **Clause 5**), but do not include any other methods of electronic messaging] **OR** [do not include e-mail or any other methods of electronic messaging].

2. CLAIMS AND PAYMENTS

This provision sets out when and how claims can be made under this agreement, and when and how payments must be made in response to any claims. It also deals with the application of sums paid.

2.1 Failure to pay Scheme Liabilities

Where, after a Relevant Event has occurred, the Admission Body has failed to pay any Scheme Liabilities (in whole or in part) to the Administering Authority within 20 Business Days of service on the Admission Body of a written demand from the Administering Authority, the Guarantor must 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

Any claim by the Administering Authority under **Clause 2.1** (Failure to pay Scheme Liabilities) must be made by the service of a Payment Notice, which is to be accepted by the Guarantor as conclusive evidence for all purposes that the amount claimed is due to the Administering Authority.

2.3 Payment by Guarantor

The Guarantor must pay the sum so demanded within **[5]** Business Days of service of the Payment Notice. 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 Application of payment by Administering Authority

2.4.1 All sums paid by the Guarantor in accordance with **Clause 2.3** (Payment by Guarantor) must be held and applied by the Administering Authority for the purpose of paying and discharging the Scheme Liabilities.

2.4.2 Following payment by the Guarantor, 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 does not preclude the service of any further Payment Notice.

3. TERMINATION

This provision sets out when this agreement will come to an end.

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 LGPS Regulations and notwithstanding the insolvency, winding up or liquidation of the Admission Body (compulsory or otherwise) or the Admission Body 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 provision 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 provision sets out how any notices envisaged in the other provisions of this agreement are to be served. Provisions requiring formal written notice include **Clause 2.2** (on service of Payment Notices).*

5.1 **Form of notice and address for service**

Any notice under this Agreement must be in writing and must be served on the party to which it is to be issued at that party's registered office or, where there is no registered office, its headquarters address. This includes Payment Notices.

5.2 **Methods, date and time of service**

Any notice under this Agreement must be served by one of the methods, and will be deemed to have been served at the time and on the date, set out below:

Method of service:	Time and date service deemed to be made:
Notice is sent by first-class post	9.00 am on second Business Day after date of posting
Notice is left at the service address, or is delivered to that address by any other means	If served between 9.00 am and 5.00 pm on a Business Day, at the time the notice is delivered to or left at the service address If served on a day which is not a Business Day, or after 5.00 pm on a Business Day, at 9.00 am on the next Business Day If served before 9.00 am on a Business Day, at 9.00 am on that day

6. **WAIVER**

This provision makes it clear that a failure to enforce rights under this agreement will not amount to a waiver of those rights.

If a party fails to enforce any provision of this Agreement at any time, that failure will not:

- (a) be construed or deemed to be a waiver of that party's rights;
- (b) affect the validity of any part of this Agreement; or
- (c) prejudice that party's rights to take subsequent action to enforce any provision of this Agreement.

7. **SEVERANCE**

This provision sets out what happens if any part of this agreement is found to be invalid.

If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable:

- (a) that invalidity or unenforceability will not affect the other provisions of this Agreement, which will remain in full force and effect; and
- (b) if the provision in question would be valid and enforceable if some part of it were deleted, the provision will apply with any changes which are necessary to make it valid and enforceable.

8. **ENTIRE AGREEMENT**

This provision confirms that this agreement sets out the only legal terms relating to the provision of the guarantee by the Guarantor. Anything contained in communications between the parties during the negotiation process leading up to the execution of this agreement but which is not reflected in its terms is not intended to be legally binding or enforceable.

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.

9. **AMENDMENT**

This provision explains how the terms of this agreement may be changed.

This Agreement may only be amended by a deed executed by all the parties.

10. **EXECUTION IN COUNTERPARTS**

This provision explains how this agreement can be executed in counterparts (meaning that there may not be a single document signed by all the parties).

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.

11. **ASSIGNMENT**

This provision sets out when the agreement may be assigned to a third party.

11.1 Subject to **Clause 11.2** (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).

11.2 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 LGPS Regulations as a result of local government re-organisation.

12. **GOVERNING LAW AND JURISDICTION**

This provision confirms the legal framework which governs this agreement and any associated legal obligations.

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).

13. **THIRD PARTY RIGHTS**

This provision confirms that third parties are not intended to be able to enforce any of the provisions of this agreement, even if those provisions are for their benefit.

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 service on you 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**

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:

OR

**[THE CORPORATE SEAL of
THE SECRETARY OF STATE FOR
HOUSING COMMUNITIES AND
LOCAL GOVERNMENT**

hereinto affixed is authenticated by:

Authorised by the Secretary of State]

Template