

DATED _____ **202**

THE KENT COUNTY COUNCIL (1)

- and -

[NAME OF ADMISSION BODY] (2)

- and -

[NAME OF GUARANTOR] (3)

GUARANTEE

Ref:
Draft No.
Dated:

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Authorised and regulated by the Solicitors Regulation Authority registration number 631355.

THIS GUARANTEE is made the

day of

202

BETWEEN

- (1) **THE KENT COUNTY COUNCIL** of County Hall, Maidstone, Kent ME14 1XQ (the “**Administering Authority**”);
- (2) **[ADMISSION BODY]**, a [private limited company whose company number is [INSERT] and whose registered office is at [INSERT]] [OR AS THE CASE MAYBE] (the “**Admission Body**”); and
- (3) **[GUARANTOR]**, Incorporated in [INSERT] under registration number [INSERT] whose registered office is at [INSERT] and whose address for service for the purpose of this Guarantee is [INSERT] OR **[SCHEME EMPLOYER]** of [address] OR **[SECRETARY OF STATE]** (the “**Guarantor**”)

and is executed and delivered pursuant to the provisions of the Local Government Pension Scheme Regulations 2013 as amended, consolidated or substituted from time to time (the “**Regulations**”).

WHEREAS

- (A) In this Guarantee words and expressions used shall unless defined herein or the contrary is stated bear the meaning set out in the Regulations or the Admission Agreement.
- (B) The Administering Authority is an administering authority of the Local Government Pension Scheme (the “**Scheme**”) within the meaning of the Regulations.
- (C) By an agreement (the “**Contract**”) entered into between the Administering Authority OR NAME OF SCHEME EMPLOYER (the “**Scheme Employer**”) OR the Guarantor as Scheme Employer and the Admission Body dated [DATE], the [Administering Authority OR Scheme Employer OR Guarantor as Scheme Employer] transferred services or assets (the “**Services**”) in connection with its functions to the Admission Body.
- (D) The Admission Body and the Administering Authority have entered into an agreement (the “**Admission Agreement**”) pursuant to the Contract being an admission agreement for the purpose of the Regulations, to regulate the participation of Eligible Employees in the Scheme subject to the provision of a guarantee in the form of this Guarantee.
- (E) The Guarantor has agreed with the Administering Authority at the request of the Admission Body to provide this Guarantee to the Administering Authority in the amount assessed by the Fund Actuary to secure the payment to the Administering Authority of the Scheme Liabilities as defined in this Guarantee.
- (F) The Guarantor hereby confirms that it falls within the categories of bodies described in paragraph 8 of Part 3 of Schedule 2 of the Regulations.

NOW THIS DEED witnesses as follows:-

1. In this Guarantee:

“ Accrual Date ”	means [insert] ⁱ being the first or third anniversary of the Commencement Date of the Guarantee.
“ Guarantee Amount ”	the single total guarantee limit figure or each of the non-cumulative guarantee limit figures set out in clause 2.
“ Commencement Date ”	{insert first day of the period to be covered by the Guarantee}.

“Expiry Date”	shall be [insert] ⁱⁱ being 12 months after the Accrual Date.
“Fund”	means the Kent County Council Pension Fund.
“Fund Actuary”	means an actuary appointed from time to time by the Administering Authority.
“Regulations”	means the Local Government Pension Scheme Regulations 2013, as amended, consolidated or substituted from time to time.
“Relevant Institution”	means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits or to effect and carry out contracts of general insurance; or a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.
“Scheme Liabilities”	shall mean the amount assessed by the Fund Actuary as representing the exit and other payments arising on termination, employer and employee contributions and associated benefits, cessation deficits, other deficits or losses to the Fund; all other sums (including interest payable under the Regulations) which are due and payable by the Admission Body and which arise from the admission of persons to the Fund under the Admission Agreement and in each case whether they arise under the express provisions of the Admission Agreement, the Regulations or subsequent governing regulations.

2. GUARANTEE AMOUNT

This Guarantee is for:

[Select appropriate clause i.e. either clause 2.1, 2.2 or 2.3 and delete all others]

2.1 the total sum of £ [insert total specific sum]

OR

2.2 the sum of £(insert) for a fixed term of one (1) year

OR

2.3 the following variable sums:

2.3.1 For the first year the sum of [£insert] where the Relevant Event is before or on [insert end date of first year];

2.3.2 [For the second year the sum of [£insert] where the Relevant Event is on or between [insert start date year 2] and [insert end date year 2] inclusive;

2.3.3 [For the third year the sum of [£insert] where the Relevant Event is on or after [insert start date year 3];

2.3.4 For subsequent years, the sum of [£insert third year sum set out in clause 2.3.3 above] which shall be retained until revised following any subsequent actuarial valuation.

- (“The Guarantee Amount”).
- 2.4 The Administering Authority and Scheme Employer (as the case may be) shall with regard to the Admission Body keep under review the level of risk arising on premature termination of the provision of service or assets by reason of insolvency, winding up or liquidation of the Admission Body at no more than annual intervals or as otherwise advised by the Fund Actuary. Following such review, where the risk requires it and within 30 days of notification by the Administering Authority or the Scheme Employer, the Admission Body shall:
- 2.4.1 arrange for the existing Guarantee to be amended to cover the revised amount of assessed risk; or
- 2.4.2 if required by the Administering Authority secure a new Guarantee to cover the revised amount of the assessed risk.
- 2.5 Pursuant to the provisions of this clause 2.2, where the Guarantee Amount is revised by the Fund Actuary, the parties shall comply fully with the provisions of clause 14 of this Guarantee.
- 2.6 This Guarantee shall continue until the Guarantor is released from all liability under it in accordance with clause 8.
3. **WARRANTY**
- 3.1 The Admission Body warrants to the Administering Authority that no Relevant Events have occurred prior to the Commencement Date.
4. **RELEVANT EVENT**
- 4.1 In this Guarantee a **Relevant Event** shall occur on or following any of the following events set out below:
- 4.1.1 the Admission Body’s insolvency, winding up or liquidation; or
- 4.1.2 the Admission Body's breach of any of its obligations under the Admission Agreement (but where the breach is capable of remedy, only where it has not been remedied within a reasonable time); or
- 4.1.3 the Admission Body's failure to pay any sums due to the Fund within a reasonable period of a notice from the Administering Authority requiring payment; or
- 4.1.4 the termination of the Commercial / Outsourcing Contract referred to in recitals C and D above; or
- 4.1.5 the date the Admission Body ceases to employ any Eligible Employee; or
- 4.1.6 the date the Admission Body otherwise ceases to be an admission body for the purposes of the Regulations
- and in any such case, the Admission Body fails to pay or discharge the Scheme Liabilities in the manner set out in this Guarantee or the Admission Agreement.
5. The Guarantor shall, following the occurrence of any of the Relevant Events set out in clause 4 above and upon the Administering Authority making a demand and certifying that the amount demanded is due from the Admission Body pursuant to the Admission Agreement or the Regulations in respect of Scheme Liabilities, pay to the Administering

Authority such sum or sums (not exceeding the Guarantee Amount) as shall be demanded by the Administering Authority.

6. Any demand served by the Administering Authority pursuant to the terms of this Guarantee shall be in the form of the template set out in Appendix 1 of this Guarantee and the Guarantor shall pay the sum so demanded within twenty one days of receipt of the same, in default of which, interest will be payable calculated at one per cent (1%) above the Bank of England base rate, per annum calculated daily at the “Prescribed Rate” from the date payment is due from the Guarantor until payment is made by the Guarantor.
7. The maximum liability of the Guarantor under this Guarantee shall not exceed the Guarantee Amount.
8. The obligations and liabilities of the Guarantor under this Guarantee shall cease and determine absolutely:
 - 8.1 on the day immediately following the day on which the Guarantor shall have paid to the Administering Authority a sum equal to the Guarantee Amount.
 - 8.2 where any of the events in clause 4 has occurred, on the date specified in the written notice of discharge issued by the Administering Authority to the Guarantor confirming that the Admission Body has discharged all its liabilities under the Admission Agreement and the Regulations. This notice of discharge shall be in the form of the template set out in Appendix 3 of this Guarantee.
9. All sums paid by the Guarantor under the terms of this Guarantee shall be held and wholly applied by the Administering Authority for the purpose of paying and discharging the Scheme Liabilities. The Administering Authority shall not be obliged to repay or release the same (or any part thereof not so applied as the case may be) to the Guarantor or (if the Admission Body has repaid such sum to the Guarantor in full) the Admission Body unless all Scheme Liabilities have been discharged in full following the Relevant Event.
10. Following any payment by the Guarantor under the terms of this Guarantee the Administering Authority shall provide to the Guarantor as soon as reasonably practicable an account in respect of the application of such sums and if any payment made by the Guarantor/Admission Body pursuant to such demand shall exceed the amount required to discharge the Scheme Liabilities, the Administering Authority shall refund such overpayment to the Guarantor/Admission Body together with interest at the Prescribed Rate from the date of payment by the Guarantor to the date of repayment.
11. The service of any claim or demand by the Administering Authority under the terms of this Guarantee shall not (subject only to the Guarantee Amount) preclude the service of any other or further demand.
12. The obligations and liabilities of the Guarantor under this Guarantee shall not be reduced, discharged, impaired or affected by:
 - 12.1 the giving of time or any other indulgence, forgiveness or forbearance by the Administering Authority; nor by
 - 12.2 any amendment or variation of the Regulations or the Admission Agreement or the rules applicable to the administration thereof or the payment and calculation of benefits under the Scheme; nor by
 - 12.3 the insolvency of the Admission Body or any disclaimer of its contracts and liabilities by a liquidator; nor by
 - 12.4 the admission of additional employees to the Scheme.

13. Save as provided for at clause 14 below, no variation of this Guarantee shall have effect unless it is by deed and duly executed by the parties.
14. Where the Fund Actuary revises the level of guarantee that the Administering Authority should require:
 - 14.1 the Admission Body shall instruct the Guarantor to vary the current guarantee levels to reflect the revised levels prescribed by the Fund Actuary in their report.
 - 14.2 The Administering Authority shall notify the Admission Body of the revised levels by completing the template attached to this Guarantee as Appendix 2A or 2B as the case may be. Once completed, Appendix 2A or 2B must be signed by the Guarantor and returned to the Administering Authority within 14 days of receipt.
 - 14.3 The parties agree that no such variation shall be of effect unless it is at least the amount prescribed by the Fund Actuary. For the avoidance of doubt no such variation may have the effect of modifying the termination provisions of the Guarantee.
15. The Admission Body shall, before the Expiry Date of this Guarantee, procure the Guarantor's service of a notice ("Extension Notice") extending the period of validity of this Guarantee, by reference to the Accrual Date, to the new date set out in the Extension Notice. Any Extension Notice shall be in the form of the template appended to this Guarantee at Appendix 2B.
 - 15.1 The Admission Body shall ensure that at all times while the Admission Agreement subsists, there shall be in place a guarantee either from the Guarantor or from a Relevant Institution in substantially the form of this instrument/guarantee as shall be acceptable to the Administering Authority to secure the payment by the Admission Body of the Scheme Liabilities.
 - 15.2 If the Admission Body procures the Guarantor's service (on the instructions of the Administering Authority) for the provision of an Extension Notice not less than 30 days before the Accrual Date, the provisions of this Guarantee Agreement shall remain and continue in full force and effect until the Extension Notice takes effect.
16. Any demand under this Guarantee shall be in writing addressed to the Guarantor at its address for service as set out above or to such other address as the Guarantor shall advise to the Administering Authority by not less than seven days prior notice in writing and shall be deemed to be served upon actual delivery to the Guarantor.
17. A person who is not a party to this Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Guarantee. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
18. This Guarantee is personal to the Administering Authority and is not assignable or transferable.
19. This Guarantee shall be governed by and construed in accordance with the laws of England and only the courts of England shall have jurisdiction in relation to it.

IN WITNESS whereof the parties have executed and delivered this Guarantee as a deed the date and year first before written

THE COMMON SEAL of THE KENT COUNTY)
COUNCIL was hereunto affixed in the)
presence of:)

Authorised Signatory

EXECUTED AS A DEED by)
[ADMISSION BODY])
acting by)

Director

Director/Secretary

Executed as a Deed by)
INSERT GUARANTOR'S RELEVANT)
ATTESTATION
CLAUSE

**APPENDIX 2A
TEMPLATE FOR VARIATION OF ACTUARIAL GUARANTEE VALUES/REVISIONS**

Dear

Pursuant to the Guarantee executed on [] (“Original Guarantee”) the revised Guarantee Amount is set out below:

ADMINISTERING AUTHORITY: KENT COUNTY COUNCIL

GUARANTOR:

ADMISSION BODY:

NAME AND TITLE OF MATTER:

FILE REFERENCE:

GUARANTEE REFERENCE:

DATE OF GUARANTEE:

PREVIOUS GUARANTEE AMOUNT:

REVISED / NEW GUARANTEE AMOUNT:

EFFECTIVE DATE OF REVISED / NEW GUARANTEE AMOUNT:

Save as specifically amended by this variation letter the Original Guarantee shall remain in full force and effect.

.....

SIGNATURE

Name

Position

Date

**APPENDIX 2B
EXTENSION NOTICE**

From: [Name and Address of Guarantor]

To: Kent County Council (as Administering Authority of the Kent County Council Pension Fund) (Treasury and Investments), of County Hall, Maidstone, Kent. ME14 1XQ.

Re: Guarantee Reference Number [] dated [] in favour of Kent County Council as Administering Authority in respect of the obligations of [insert details of the Admission Body] (the “the Guarantee”)

We refer to the Guarantee in which the Accrual date of [] is currently due to expire on the [**insert Expiry Date as set out in the Guarantee**] day of [].

We have been requested by [insert details of the Admission Body] Limited, the Admission Body, to extend the Guarantee for a further period of [] year/s as and from the Accrual Date. We now accordingly give notice pursuant to and in accordance with clause 14 of the Guarantee that the Guarantee shall be treated as amended and extended upon the terms and conditions therein by the addition to the Guarantee of the following wording :

[tba] (£[tba]) for a claim relating to the period from [next year start date (which should be the anniversary of the date of the guarantee)] to [next year end date] and [next year end date] shall now be the Accrual Date.

Save as specifically amended by the terms of this Extension Notice the Guarantee shall not be deemed to be amended or varied and shall remain in full force and effect in accordance with its terms.

[INSERT APPLICABLE PROPER EXECUTION PROVISIONS]

**APPENDIX 3
NOTICE OF DISCHARGE OF GUARANTOR**

DATE OF NOTICE:

GUARANTEE REFERENCE:

DATE OF GUARANTEE:

NAME AND ADDRESS OF ADMISSION BODY:

NAME AND ADDRESS OF GUARANTOR:

TO WHOM IT MAY CONCERN

This is to confirm that due to [insert in summary the reasons why the guarantee now needs to be discharged and refer to the relevant clauses of the guarantee for assistance especially the clause relating to the Termination], the Guarantor's obligations/ Scheme Liabilities under the above-mentioned Admission Agreement and Guarantee pursuant to the Regulations and any later governing regulations are hereby discharged and terminated with effect from the date of this notice.

Signed for and on behalf of Kent County Council as Administering Authority by:

.....

Name in full

.....

Signature

.....

Position

.....

Date:

ⁱ insert end date of year 1 or the end date of year 3 of the guarantee as set out in clause 2

ⁱⁱ [insert date Which is 12 months after the end date of year 1 or year 3 of the guarantee]