

DATED

201[ ]

(1) LANCASHIRE COUNTY COUNCIL

(2) [*Admission Body*]

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**ADMISSION AGREEMENT  
FOR AN  
ADMISSION BODY**

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**Lancashire County Pension Fund**



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## **SCHEDULES**

Schedule 1 – SPECIMEN FORM OF BOND

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**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

**1.1 Definitions**

Save as defined below unless the context requires otherwise words and expressions used in this Agreement shall have the same meanings as in the Regulations.

**"AVC"** Additional Voluntary Contribution as referred to in regulation 17 of the Regulations;

**"Business Day"** any day other than a Saturday or Sunday or a public or bank holiday in England;

**"Contract"** the contract [dated/commencing on] [ ] made between the Admission Body and the Scheme Employer, for the provision of services under which the Eligible Employees are employed.

**"Eligible Employee"** an employee employed by the Admission Body in connection with the services/assets referred to in the Contract to the extent listed in Schedule 2 provided that such employee:

- (a) remains employed by the Admission Body in connection with the provision of the services under the Contract; and
- (b) otherwise satisfies the requirements of the Regulations relating to eligibility for membership of the Scheme;

<b>“FOIA”</b>	Means the Freedom of Information Act 2000 and any amending legislation;
<b>"Fund"</b>	The Lancashire County Pension Fund;
<b>"Payment Period"</b>	Has the same meaning as in Schedule 1 to the Regulations;
<b>"Regulations"</b>	The Local Government Pension Scheme Regulations 2013 (SI 2356/2013);
<b>“SCAVC”</b>	Shared Cost Additional Voluntary Contribution as referred to in regulation 17 of the Regulations;
<b>"Scheme"</b>	The occupational pension scheme which is constituted by the Regulations;
<b>"Transfer Date"</b>	The date upon which the Eligible Employees transfer to the Admission Body under the Contract. That date for the purposes of this agreement being [            ]
<b>"Transitional Regulations"</b>	Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014/525

1.2 For the purposes of this Agreement the words “employed in connection with” shall mean that an Eligible Employee is employed by the Admission Body on the basis that in any six (6) month period an Eligible Employee spends not less than fifty per cent (50%) of his time whilst working on matters directly relevant to the Contract. For the avoidance of doubt, when assessing the time spent working on matters directly relevant to the Contract the Admission Body should take into account a range of factors including (but not limited to) the time spent on different parts of the business, the value given to each part of the business, the contract of employment and how the costs of that employee are dealt with.

- 1.3 In this Agreement where the context so admits, words denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine gender and vice versa.
- 1.4 Reference to any statute or statutory instrument shall be deemed to include reference to any such statute or statutory instrument as from time to time amended varied replaced extended or re-enacted and any orders or regulations under such provisions unless the context otherwise requires.
- 1.5 Reference to clauses or schedules shall be deemed to be references to a clause or schedule to this Agreement and references to a sub-clause shall be deemed to be a reference to a sub-clause of the clause in which the reference appears.
- 1.6 Headings are included for ease of reference only and shall not affect this Agreement or its interpretation.

## **2. EFFECTIVE DATE**

- 2.1 This Agreement shall have effect from the Transfer Date and shall continue subject to termination in accordance with **Clause 8**.

## **3. ADMISSION**

- 3.1 The Administering Authority shall as from the Transfer Date permit the Eligible Employees who were active members of the Scheme on the day immediately before the Transfer Date to be active members of the Scheme and participate in the Fund.
- 3.2 An Eligible Employee who was not an active member of the Scheme on the day immediately before the Transfer Date shall not become an active member of the Scheme on the Transfer Date but may apply in writing to the Admission Body to become an active member of the Scheme and shall become an active member of the Scheme on the first day of the Payment Period following the application.

## **4. PARTICIPATION**

- 4.1 The provisions of the Regulations and the Transitional Regulations shall apply for determining the rights and obligations of and the action which is to be taken

by each party to this Agreement and for the transmission of information between them and each party hereby undertakes with the other to take such action promptly and where such information is not in the possession of or under the control of one of the parties to use their respective best endeavours to ensure such information is provided promptly.

- 4.2 The Regulations and the Transitional Regulations shall apply to employment with the Admission Body in which an Eligible Employee is an active member (as defined in Schedule 1 to the Regulations).
- 4.3 The Admission Body warrants and represents to Lancashire County Council (as Administering Authority and Scheme Employer) that every Eligible Employee is employed in connection with the provision of the services or assets referred to in the Contract and in Schedule 2 Part 3 paragraph 1(d) of the Regulations.
- 4.4 The Admission Body shall promptly notify Lancashire County Council (as Administering Authority and the Scheme Employer) in writing if any Eligible Employee ceases to be employed in connection with the provision of the services or assets referred to in the Contract. Lancashire County Council (as Administering Authority and Scheme Employer) and the Admission Body acknowledge that any Eligible Employee who ceases to be employed in connection with the provision of the services or assets referred to in the Contract or who otherwise ceases to be eligible to be an active member, (as defined in section Schedule 1 to the Regulations) of the Scheme in accordance with clause 1.1 of this Agreement or the Regulations, shall cease to be an active member (as defined in section Schedule 1 to the Regulations) of the Scheme.
- 4.5 The Scheme Employer shall be liable for and shall indemnify the Fund against any failure on the part of the Admission Body to comply with its obligations under this Agreement.

## **5. PAYMENTS**

- 5.1 The Admission Body shall pay to the Administering Authority for credit to the Fund such contributions and payments as are due under the Regulations in respect of the Eligible Employees.

- 5.2 The Admission Body shall pay to the Administering Authority for credit to the Fund the employee and employer pension contributions on a monthly basis in arrears. The payment must be paid to the Administering Authority within nineteen (19) calendar days of the end of each month in which the pension contributions have been deducted.
- 5.3 The contribution rate required to be paid by the Admission Body will be assessed by an actuary appointed by the Administering Authority assuming a past service funding level in respect of those Eligible Employees who were previously members of the Scheme and participated in the Fund of [one hundred per cent (100%)] as at the Transfer Date.
- 5.4 The Admission Body shall pay to the Administering Authority for credit to the Fund any additional or revised contributions due under either sub-clause 6.1.7 or 7.2.2 within thirty (30) calendar days of receipt of a written request from the Administering Authority.
- 5.5 Any employees' AVCs or SCAVCs shall be paid direct by the Admission Body to such AVC body and/or AVC insurance company selected by the Administering Authority and notified to the Admission Body. Any such contributions shall be paid within nineteen (19) calendar days of the end of each month in which the contributions have been deducted.
- 5.6 Where the Admission Body certifies that:
- 5.6.1 an Eligible Employee aged fifty-five (55) or more who is an active member of the Scheme is being dismissed by reason of redundancy or in the interests of efficiency;
  - 5.6.2 an Eligible Employee is voluntarily retiring on or after age fifty-five (55) and the Admission Body exercises a discretion to waive actuarial reductions;
  - 5.6.3 an Eligible Employee who is a deferred member of the Scheme requests that their benefits are brought into payment early on or after age fifty-five (55) and the Admission Body exercises a discretion to waive actuarial reductions;

the Admission Body shall pay to the Administering Authority for credit to the Fund the sum notified to it in writing by the Administering Authority as representing the actuarial strain on the Fund resulting from the immediate payment of benefits as certified by an actuary appointed by the Administering Authority, such sum to be paid (unless other terms are agreed between the Administering Authority and the Admission Body) within thirty (30) calendar days of receipt by the Admission Body of the written notification.

- 5.7 The Admission Body shall indemnify the Administering Authority against any financial penalty and associated costs and expenses incurred by the Administering Authority or by the Fund arising from any failure by the Admission Body to comply with the terms of this Agreement the Regulations or any overriding legislation. Such payment is to be paid within thirty (30) calendar days of receipt of a written request from the Administering Authority.
- 5.8 If any sum payable under this Agreement or the Regulations by the Admission Body to the Administering Authority or to the Fund has not been paid (in whole or in part) within the payment period specified in this Agreement (or otherwise in accordance with the Regulations) the Administering Authority may require the Admission Body to pay interest calculated in accordance with the Regulations on the amount remaining unpaid.
- 5.9 If any sum payable under this Agreement or the Regulations by the Admission Body to the Administering Authority or to the Fund has not been paid (in whole or in part) within the payment period specified in this Agreement (or otherwise in accordance with the Regulations) the Scheme Employer may set off against any payments due from the Scheme Employer to the Admission Body an amount equal to the sum due from the Admission Body under this Agreement or the Regulations (including any interest due in accordance with the Regulations) and pay that amount to the Administering Authority for credit to the Fund.
- 5.10 The Admission Body and the Scheme Employer agree that the right of set-off in clause 5.9 shall be valid and enforceable notwithstanding any provision to the contrary in the Contract.

## **6. ADMISSION BODY'S UNDERTAKINGS**

### **6.1 The Admission Body undertakes:**

- 6.1.1 to provide or procure to be provided such information as is reasonably required by the Administering Authority relating to the Admission Body's participation in the Fund including (but not limited to) details of the pay and final pay of each Eligible Employee;
- 6.1.2 to comply with the reasonable requests of the Administering Authority to enable it to comply with the requirements of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (SI 2013/2734);
- 6.1.3 to adopt the practices and procedures relating to the operation of the Scheme as set out in the Regulations and in any employer's guide published by the Administering Authority and provided by the Administering Authority to the Admission Body;
- 6.1.4 to formulate and publish within three (3) calendar months of the Transfer Date a statement concerning the Admission Body's policy on the exercise of its functions or discretions in accordance with the requirements of the Regulations and to keep such policy under review;
- 6.1.5 to notify Lancashire County Council (as Administering Authority and Scheme Employer) of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion;
- 6.1.6 to promptly notify Lancashire County Council (as Administering Authority and Scheme Employer) in writing of any material change in the terms and conditions of employment of any of the Eligible Employees which affects entitlement to benefits under the Scheme and of any termination of employment by virtue of redundancy or in the interests of efficiency or for any other reason;

- 6.1.7 that it shall not grant additional pension to an Eligible Employee or former Eligible Employee under regulation 31 of the Regulations save to the extent that the appropriate sum is paid by the Admission Body to the Administering Authority for credit to the Fund. Such payment is to be paid within thirty (30) calendar days of receipt of a written request from the Administering Authority.
- 6.1.8 not to do any act or omission or thing which would prejudice the status of the Scheme as a registered pension scheme within the meaning of the Finance Act 2004; and
- 6.1.9 to immediately notify Lancashire County Council (as Administering Authority and Scheme Employer) in writing of any matter which may affect or is likely to affect its participation in the Scheme and of any actual or proposed change in its status which may give rise to a termination of the Contract or this Agreement including but not limited to take-over reconstruction amalgamation insolvency winding up receivership or liquidation or a change in the nature of its business or constitution.

## **7. ACTUARIAL VALUATIONS**

- 7.1 The Administering Authority may periodically and shall at least on a triennial basis obtain from an actuary a certificate specifying in the case of the Admission Body the percentage or amount by which in the actuary's opinion the contribution rate at the primary rate or secondary rate within the meaning regulation 62 of the Regulations should be increased or reduced. This is with a view of ensuring that as far as is reasonably possible the value of assets of the Fund in respect of current and former Eligible Employees is neither materially more nor materially less than the anticipated liabilities of the Fund in respect of the said Eligible Employees at the date the Contract is due to end. For the avoidance of doubt the decision as to whether the said assets are materially more or materially less than the said liabilities shall be left to the discretion of the actuary appointed by the Administering Authority.
- 7.2 Upon termination of this Agreement the Administering Authority must obtain:

- 7.2.1 an actuarial valuation of the liabilities of the Fund in respect of current and former Eligible Employees as at the date of termination; and
- 7.2.2 a revision of any rates and adjustment certificate within the meaning of the Regulations showing the revised contributions due from the Admission Body.
- 7.3 The costs of obtaining the certificates (or revisions to them) and the actuarial valuations referred to in clause 7.1 (other than a triennial valuation) and clause 7.2 shall be paid by the Admission Body within thirty (30) calendar days of receipt of written notification of such costs from the Administering Authority.

## **8. TERMINATION**

- 8.1 Subject to clauses 8.2 and 8.3 this Agreement shall terminate at the end of the notice period upon the Administering Authority or the Admission Body giving a minimum of three (3) calendar months' notice in writing to terminate this Agreement to the other party or parties to this Agreement, provided that such notice shall not have effect unless an occupational pension scheme (as defined in section 1 of the Pension Schemes Act 1993) certified by the Government Actuary's Department or such other actuary as is approved by the Scheme Employer as being broadly comparable to the Scheme, is made available to the Eligible Employees at the date of such termination.
- 8.2 This Agreement shall terminate automatically on the earlier of:
- 8.2.1 the date of the expiry or earlier termination of the Contract; or
- 8.2.2 the date the Admission Body ceases to be an Admission Body for the purposes of the Regulations.
- 8.3 This Agreement may be terminated by the Administering Authority by notice in writing to the Admission Body taking immediate effect in the event of:
- 8.3.1 the insolvency winding up or liquidation of the Admission Body;

- 8.3.2 any breach by the Admission Body of any of its obligations under this Agreement or the Regulations (other than a failure by the Admission Body to pay any sums due to the Administering Authority or to the Fund) provided that the Administering Authority shall if the breach is capable of remedy first afford to the Admission Body the opportunity of remedying that breach within such reasonable period (being not less than twenty (20) Business Days) as the Administering Authority may specify;
- 8.3.3 the failure by the Admission Body to pay any sums due to the Administering Authority or to the Fund within the periods specified in this Agreement or in the Regulations or in any other case within thirty (30) calendar days of receipt of a written notice from the Administering Authority requiring the Admission Body to do so, provided that the Administering Authority shall first issue a notice to the Admission Body requiring it to pay such outstanding sums within such reasonable period (being not less than ten (10) Business Days) as the Administering Authority may specify, and may only proceed to terminate the Agreement if the Admission Body fails to pay the requested sums within such specified period;
- 8.3.4 the failure by the Admission Body to procure, renew or adjust the level of the bond, indemnity, or guarantee in accordance with clause 9.3 or 9.5.
- 8.4 The termination of this Agreement howsoever arising is without prejudice to the rights duties and liabilities of the Administering Authority accrued prior to termination. The clauses of this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination including (but not limited to) clause 5.

## **9. BOND/GUARANTEE/INDEMNITY (For use where no bond required)**

- 9.1 The Admission Body has carried out, to the satisfaction of Lancashire County Council (as Administering Authority [and Scheme Employer]), an assessment, taking account of actuarial advice, of the level of risk arising on premature

termination of the provision of the service or assets under the Contract by reason of the insolvency, winding up or liquidation of the Admission Body.

9.2 Lancashire County Council (as Administering Authority [and Scheme Employer]) has decided that (subject to clause 9.3 below) the level of risk exposure identified by the assessment referred to in clause 9.1 above does not require the Admission Body to enter into an indemnity or bond under the Regulations at this time.

9.3 The Admission Body and Scheme Employer shall keep under assessment the level of risk arising as a result of the matters mentioned in Schedule 2 Part 3 paragraph 6 of the Regulations at no more than annual intervals, the first review to be undertaken by no later than the first anniversary of the Transfer Date.

9.3.1 Where upon a review the Scheme Employer considers that a bond/indemnity is required to cover the revised level of risk exposure the Admission Body shall procure that a bond/indemnity in the form set out in Schedule 1 (or such other form as is approved by the Administering Authority and the Scheme Employer) is entered into within a period of thirty (30) days.

9.3.2 Where upon a review the Scheme Employer considers that a bond/indemnity does not cover the revised level of risk exposure the Admission Body shall procure that the bond/indemnity is renewed or varied (where necessary) to cover the revised level of risk exposure. The Admission Body shall provide a copy of each bond/indemnity entered into in relation to this Admission Agreement to the Administering Authority as soon as is reasonably practicable.

9.4 The costs of reviewing the level of risk pursuant to clause 9.3 shall be paid by the Admission Body within thirty (30) calendar days of receipt of written notification of such costs from the Administering Authority.

9.5 In the event that the Administering Authority is satisfied, notwithstanding that the review undertaken by the Admission Body in accordance with clause 9.3

identifies a level of risk which would normally require the Admission Body to enter into an indemnity or bond, that an indemnity or bond would not in the circumstances be desirable, the Admission Body shall provide to the Administering Authority within thirty (30) calendar days of receiving notice to do so a guarantee from an authorised person as set out in Schedule 2 Part 3 paragraph 8) of the Regulations in the form annexed at Schedule 1A or such other form as is approved by the Administering Authority in respect of the revised level of risk exposure.

**9. BOND/GUARANTEE/INDEMNITY (For use where a bond is required)**

9.1 The Admission Body has carried out, to the satisfaction of Lancashire County Council (as Administering Authority [and Scheme Employer]), an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the service or assets under the Contract by reason of the insolvency, winding up or liquidation of the Admission Body.

9.2 The level of risk exposure identified by the assessment referred to in clause 9.1 above requires that the Admission Body enters into an indemnity or bond under the Regulations.

**(OR – where bond/indemnity undesirable:**

9.2 Due to the level of risk exposure identified by the assessment referred to in clause 9.1 above the Administering Authority requires that the Admission Body secures a guarantee under the Regulations.)

9.3 The Admission Body warrants that it will provide by [the Transfer Date/within thirty (30) calendar days of receiving notice to do so] a bond with an authorised person or firm as set out in Schedule 2 Part 3 paragraph 7 of the Regulations in the form annexed at Schedule 1 (or such other form as is approved by Lancashire County Council (as Administering Authority and Scheme Employer) for the sum of £[ ] [ ] pounds sterling in respect of the risk exposure specified in clause 9.2 and that the bond is in place.

**(OR – where bond/indemnity undesirable:**

- 9.3 The Admission Body warrants that it will provide by [the Transfer Date/within thirty (30) days of receiving notice to do so] a guarantee from an authorised person as set out in Schedule 2 Part 3 paragraph 8 of the Regulations in the form annexed at Schedule 1A or such other form as is approved by the Administering Authority in respect of the risk exposure specified in clause 9.2 and that the guarantee is in place.)
- 9.4 Where the [bond/indemnity/guarantee] provided under clause 9.2 is not for the full period of the Contract the Admission Body shall as the Scheme Employer directs either renew the [bond/indemnity/guarantee] (if possible) or provide a new [bond/indemnity/guarantee] in such form as Lancashire County Council (as Administering Authority [and Scheme Employer]) require to meet the level of risk exposure which has (prior to the renewal of the [bond/indemnity/guarantee] or delivery of any new [bond/indemnity/guarantee]) been actuarially assessed to the satisfaction of Lancashire County Council (as Administering Authority [and Scheme Employer]). The Admission Body shall provide a copy of the renewed or new [bond/indemnity/guarantee] to the Administering Authority.
- 9.5 The Admission Body and Scheme Employer shall keep under assessment the level of risk arising as a result of the matters mentioned in Schedule 2 Part 3 paragraph 6 of the Regulations at least annually, the first review to be undertaken by no later than the first anniversary of the Transfer Date.
- 9.6 Where upon a review the Scheme Employer considers that the bond or indemnity in place does not cover the revised level of risk exposure the Admission Body shall procure that the bond/indemnity is renewed or varied (where necessary) to cover the revised level of risk exposure. The Admission Body shall provide a copy of each bond/indemnity entered into in relation to this Admission Agreement to the Administering Authority as soon as is reasonably practicable.
- 9.7 In the event that the Administering Authority is satisfied, notwithstanding that the review undertaken by the Admission Body in accordance with clause 9.5 identifies a level of risk which would normally require the Admission Body to enter into an indemnity or bond, that an indemnity or bond would not in the

circumstances be desirable, the Admission Body shall provide to the Administering Authority within thirty (30) calendar days of receiving notice to do so a guarantee from an authorised person as set out in Schedule 2 Part 3 paragraph 8 of the Regulations in the form annexed at Schedule 1A or such other form as is approved by the Administering Authority in respect of the revised level of risk exposure.

- 9.8 The costs of reviewing the level of risk pursuant to clause 9.5 shall be paid by the Admission Body within thirty (30) calendar days of receipt of written notification of such costs from the Administering Authority.

## **10. NOTICES**

- 10.1 Any notice to be given under this Agreement shall be in writing and shall be deemed to be sufficiently served if delivered by hand or sent by prepaid post to the addresses of the parties stated at the beginning of this Agreement (unless a party notifies the others in writing of a different address for service) and shall be deemed to have been given or made:

10.1.1 if delivered by hand upon delivery at the address unless such delivery occurs on a day which is not a Business Day or after 4pm on a Business Day in which case it will be deemed to have been given at 10am on the next Business Day; or

10.1.2 if sent by prepaid post at the time at which it would have been delivered in the normal course of the post.

- 10.2 For the avoidance of doubt, no notices under this Agreement will be accepted by either fax or email.

## **11. SEVERANCE**

- 11.1 If any provision of this Agreement or period of Scheme membership completed following purported admission to the Scheme under this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable such invalidity or unenforceability shall not affect the other

provisions of or any other periods of Scheme membership under this Agreement which shall remain in full force and effect.

- 11.2 If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.
- 11.3 In the event of such an occurrence the parties shall, in so far as it is legally permitted, agree on the replacement of the invalid provision(s) with a valid one achieving the same or similar purpose.

## **12. FREEDOM OF INFORMATION ACT**

- 12.1 The Admission Body understands that Lancashire County Council is a public authority to which the FOIA applies and shall co-operate with and provide assistance to it at its own cost in enabling Lancashire County Council to comply with its obligations under the FOIA and any request for disclosure of information arising from this Agreement.
- 12.2 All requests made to Lancashire County Council under the FOIA for information relating to the operation of this Agreement or the relationship between Lancashire County Council and the Admission Body arising out of the operation of this Agreement must be referred to the Admission Body for the Admission Body to provide an opinion on disclosure to assist Lancashire County Council in reaching a decision as to whether disclosure of such information should be made.
- 12.3 At the request of Lancashire County Council, the Admission Body will also supply to it any information held by the Admission Body on behalf of Lancashire County Council, which is the subject of a request made under the FOIA.
- 12.4 Lancashire County Council will decide whether information should be disclosed pursuant to the FOIA and will make a disclosure when it is considered such disclosure is proper and in accordance with the requirements of the FOIA.

12.5 The Admission Body will ensure that any opinion or information requested by Lancashire County Council is supplied to it within five (5) Business Days of receipt of the request from so as to permit Lancashire County Council sufficient time to comply with the timescales set out in the FOIA.

### **13. DISPUTE RESOLUTION**

13.1 The parties to this Agreement shall attempt in good faith to resolve any question which may arise between them relating to its construction or to the rights and obligations under it.

13.2 If the parties are unable to resolve the dispute in informal discussion then any of the parties may at its option give notice to the other party or parties in writing of its intention to invoke the dispute procedure set out in clauses 13.3 to 13.5.

13.3 Within ten (10) Business Days of receipt of the said notice or any other period agreed between the parties the nominated representatives of the parties shall meet together to attempt to resolve the said dispute.

13.4 In the event that the individuals referred to in clause 13.3 above fail to resolve the said dispute the nominated representatives of the parties shall meet within ten (10) Business Days of the meeting referred to in clause 13.3 in a further attempt to resolve the dispute.

13.5 In the event that the individuals referred to in clause 13.4 above fail to resolve the dispute, it shall be referred to mediation

13.6 To initiate mediation, a party must give notice in writing (the "Mediation Notice") to the other party or parties to the dispute in accordance with clause 10. Where mediation is initiated, the parties will attempt to settle the dispute by mediation in accordance with the Model Mediation Procedures (the "Procedures") published by the Centre for Effective Dispute Resolution, CEDR Solve ("CEDR").

13.7 The parties shall seek to agree the appointment of a mediator, but failing agreement within twenty eight (28) days of the service of the Mediation Notice, either party may ask CEDR to nominate a mediator.

13.8 In the event that there are no such Procedures available and/or CEDR is unable or unwilling to nominate a mediator, a party may ask the President of the Law Society of England and Wales (or its successor body) to nominate a mediator and/or to recommend a mediation procedure. The parties will accept such nomination under either this or the preceding sub-clause and also the recommended mediation procedure.

13.9 If a party refuses at any time to participate in the mediation procedure and in any event if the dispute is not resolved within sixty (60) days of the service of the Mediation Notice, then any of the parties may commence proceedings in accordance with English Law.

13.10 The parties agree to continue in good faith with the performance of the Agreement during any dispute process.

#### **14. APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with English law and the parties submit to the jurisdiction of the English courts.

#### **15. RIGHTS OF THIRD PARTIES**

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

#### **16. AMENDMENTS**

16.1 The Administering Authority, the Scheme Employer and the Admission Body may, with the agreement of all of them, amend this Agreement by deed provided that:

- i) the amendment is not such that it would or might breach the Regulations or any requirement of law as it applies to the Scheme; and
- ii) the amendment would not prejudice the status of the Scheme as regards HM Revenue and Customs.

## **17. COUNTERPARTS**

- 17.1 This Agreement may be executed in any number of counterparts and this shall have the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

## **18. COSTS**

- 18.1 Each party shall pay any costs and expenses incurred by it in connection with the preparation and completion of this Agreement.

## **19. PUBLIC INSPECTION**

- 19.1 This Agreement shall be made available by Lancashire County Council for public inspection at an appropriate office.

Admission Agreement (No Separate Scheme Employer) September 2014

**THIS DOCUMENT** is executed as a deed and delivered on the date stated at the beginning of this deed.

**THE COMMON SEAL OF** )  
**LANCASHIRE COUNTY COUNCIL** )  
was affixed to this deed in the presence of: )

**Authorised Signatory**

**SIGNED** as a deed by )  
**[ADMISSION BODY]** )  
acting by a director and its secretary, )  
two directors or a director and an )  
independent witness )

**Director**

**Director/Secretary**

**Independent Witness**

**Name**

**Address**

**Occupation**

Admission Agreement (No Separate Scheme Employer) September 2014



## 2. DEFINITIONS

<b>"Admission Agreement"</b>	the admission agreement between Lancashire County Council and the Admission Body, which allows the Eligible Employees to be members of the Scheme and participate in the Fund;
<b>"Bond Amount"</b>	[[ ] pounds sterling (£)] or such other amount as may from time to time be amended by an Extension Notice;
<b>"Business Day"</b>	any day other than a Saturday or Sunday or a public or bank holiday in England;
<b>"Contract"</b>	the contract [dated/commencing on] [ ] made between the Admission Body and the Scheme Employer, for the provision of services under which the Eligible Employees are employed;
<b>"Eligible Employees"</b>	the employees of the Admission Body specified in the Admission Agreement as being eligible to be members of the Scheme;
<b>"Expiry Date"</b>	[date] or such other date as may be extended by an Extension Notice;
<b>"Extension Notice"</b>	a notice substantially in the form of the notice at Schedule 1B;
<b>"Fund"</b>	means The Lancashire County Pension Fund;
<b>"Payment Notice"</b>	a notice substantially in the form of the notice at Schedule 1C;
<b>"Regulations"</b>	The Local Government Pension Scheme Regulations 2013;
<b>"Relevant Event"</b>	either of: <ul style="list-style-type: none"><li>(a) the termination of the Admission Agreement;</li><li>(b) the failure by the Admission Body to procure not less than thirty (30) days before the Expiry Date the delivery to the Administering Authority of a Replacement Bond;</li></ul>

- (c) the failure by the Admission Body to procure not less than thirty (30) days after the results of an actuarial re-assessment of the Bond Amount have been notified to the Admission Body in writing by the Administering Authority the delivery to the Administering Authority of either an Extension Notice or a Replacement Bond covering the revised Bond Amount;

**“Replacement Bond”**

a bond substantially in the form of this Agreement with an authorised person or firm as defined in Schedule 2 Part 3 paragraph 7 of the Regulations;

**“Scheme”**

the occupational pension scheme constituted by the Regulations; ;

**“Scheme Liabilities”**

all employer and employee contributions, payments and other sums due from the Admission Body to the Administering Authority under the Admission Agreement or the Regulations in respect of the current or former Eligible Employees or otherwise;

- 2.1 In this Agreement where the context so admits words denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine gender and vice versa.
- 2.2 Reference to any statute or statutory instrument shall be deemed to include reference to any such statute or statutory instrument as from time to time amended varied replaced extended or re-enacted and any orders or regulations under such provisions unless the context otherwise requires.
- 2.3 Reference to clauses or schedules shall be deemed to be references to a clause or schedule to this Agreement and references to a sub-clause shall be deemed to be a reference to a sub-clause of the clause in which the reference appears.
- 2.4 Headings are included for ease of reference only and shall not affect this Agreement or its interpretation.

**3. CLAIMS AND PAYMENT**

- 3.1 Where following the occurrence of a Relevant Event the Admission Body has failed to pay all Scheme Liabilities (in whole or in part) to the Administering Authority within thirty (30) days of receiving a written demand from the Administering Authority the Guarantor shall pay to the Administering Authority

such sum or sums (not exceeding in the aggregate the Bond Amount) as the Administering Authority claims in respect of the unpaid Scheme Liabilities.

- 3.2 Any claim by the Administering Authority pursuant to the terms of this Agreement shall be made by the service of a Payment Notice and shall be accepted by the Guarantor as conclusive evidence for all purposes that the amount claimed is due to the Administering Authority. The Guarantor shall pay the sum so demanded within seven (7) days of receipt of the Payment Notice.
- 3.3 All sums paid by the Guarantor pursuant to clause 3.1 shall be held and applied by the Administering Authority for the purpose of paying and discharging the Scheme Liabilities.
- 3.4 Following any payment by the Guarantor pursuant to clause 3.1, the Administering Authority shall provide to the Guarantor within six (6) months of receipt of payment a written account in respect of the application of the payment. If any payment made by the Guarantor exceeds the amount required to discharge the Scheme Liabilities the Administering Authority shall refund any overpayment to the Guarantor.
- 3.5 The obligations and liabilities of the Guarantor under this Agreement shall not be reduced discharged impaired or affected by the giving of time or any other indulgence, forgiveness or forbearance by the Administering Authority.
- 3.6 The service of a Payment Notice by the Administering Authority under the terms of this Agreement shall not (subject only to the provisions of clause 4) preclude the service of any further Payment Notice.

#### **4. BOND AMOUNT**

The maximum aggregate liability of the Guarantor under this Agreement shall not exceed the Bond Amount being the sum actuarially assessed to the satisfaction of Lancashire County Council (as Administering Authority [and the Scheme Employer]).

#### **5. EXPIRY DATE**

- 5.1 This Agreement shall expire and the obligations and liabilities of the Guarantor shall cease and determine absolutely on the Expiry Date save in respect of any obligation and liability arising as a result of a Relevant Event occurring on or before the Expiry Date in respect of which a Payment Notice has been received by the Guarantor within twelve (12) months of the Expiry Date or if later the date of receiving all the information from the Admission Body necessary to calculate the Scheme Liabilities.
- 5.2 If the Admission Body procures the service of an Extension Notice by the Guarantor the provisions of this Agreement shall remain and continue in full force and effect subject only to the amendment of the Expiry Date to the date set out in such Extension Notice and/or to the amendment of the level of the Bond Amount to the level set out in such Extension Notice.

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

## **6. NOTICES**

6.1 Any notice to be given under this Agreement shall be in writing and shall be deemed to be sufficiently served if delivered by hand or sent by prepaid post to the addresses of the parties stated at the beginning of this Agreement (unless a party notifies the others in writing of a different address for service) and shall be deemed to have been given or made:

6.1.1 if delivered by hand upon delivery at the address unless such delivery occurs on a day which is not a Business Day or after 4pm on a Business Day in which case it will be deemed to have been given at 10am on the next Business Day; or

6.1.2 if sent by prepaid post at the time at which it would have been delivered in the normal course of the post.

## **7. EXECUTION**

7.1 This Agreement may be executed on a separate counterpart by each party which documents when taken together shall constitute one original.

## **8. APPLICABLE LAW**

8.1 This Agreement shall be governed by and construed in accordance with English law and the parties submit to the jurisdiction of the English courts.

## **9. RIGHTS OF THIRD PARTIES**

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

## SCHEDULE 1A

### Specimen Form of Guarantee

**THIS DEED OF GUARANTEE** is dated

**201[ ]**

#### **BETWEEN**

(1) **[GUARANTOR]** (registered number[ ] whose registered office is at [ ] (the "Guarantor");

AND

(b) **LANCASHIRE COUNTY COUNCIL** of County Hall, Preston, PR1 8XJ (the "Administering Authority") which expression includes its permitted successors and assigns

is executed and delivered pursuant to the provisions of the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) as amended or supplemented from time to time (the "Regulations").

#### **BACKGROUND**

- (A) The Administering Authority is an administering authority within the meaning of the Regulations and administers the Scheme and maintains the Fund.
- (B) [ ] (the "Admission Body") is an admission body within the meaning of Schedule 2 Part 3 paragraph 1[ ] of the Regulations.
- (C) The Guarantor is a person described in and to which Schedule 2 Part 3 paragraph 8 of the Regulations applies.
- (D) The Administering Authority and the Admission Body intend to enter into an Admission Agreement permitting the Eligible Employees to become members of the Scheme and regulating their participation in the Scheme subject to the provision of a guarantee and indemnity in the form of this Guarantee Agreement.

OR

(D) Following a review of the level of risk arising as a result of the matters mentioned in Schedule 2 Part 3 paragraph 6 of the Regulations the Administering Authority requires the Admission Body to secure a guarantee and indemnity in the form of this Guarantee Agreement.

[(E) The Guarantor has agreed at the request of the Admission Body to [jointly and severally] guarantee to the Administering Authority the performance by the Admission Body of each and every one of the Admission Body's obligations under the Admission Agreement in respect of the Scheme Liabilities.

OR

(E) The Guarantor has agreed at the request of the Admission Body to enter into this Guarantee Agreement with the Administering Authority as a guarantee in an approved form in the sum of £[ ] pounds sterling.]

(F) In this Guarantee Agreement words and expressions bear the meanings set out in the Regulations unless defined in this Guarantee Agreement, in the Admission Agreement or the contrary is stated.

## **1 COMMENCEMENT DATE**

1.1 This Guarantee Agreement shall have effect on and from the [Effective Date] and shall continue, subject to earlier termination in accordance with clause 9, until the date at which the Admission Body ceases to participate in the Fund having discharged all accrued Scheme Liabilities.

## **2 GUARANTEE AND INDEMNITY**

2.1 The Guarantor accepts the obligations and liabilities set out in this Guarantee Agreement.

2.2 The Guarantor's obligations under this Guarantee Agreement are those of primary obligor and exist irrespective of any total or partial invalidity or unenforceability of any purported obligation or liability of the Admission Body to the Administering Authority.

- 2.3 The Guarantor irrevocably and unconditionally guarantees to the Administering Authority the due and punctual payment by the Admission Body to the Administering Authority of all debts and liabilities due, owing or incurred to the Administering Authority under the Admission Agreement or the Regulations whether actual or contingent, present or future including employer and employee contributions, payments and other sums due including any interest payable under the Regulations (the "Scheme Liabilities").
- 2.4 The Guarantor as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under clause 2.3 agrees to indemnify and keep indemnified the Administering Authority in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Administering Authority arising out of, or in connection with, any failure of the Admission Body to perform or discharge any of its obligations or liabilities in respect of the Scheme Liabilities or otherwise arising in consequence of the Admission Body's participation in the Fund.
- 2.5 The termination of the Admission Agreement, for any reason, shall not affect the liability of the Guarantor for any Scheme Liabilities, which are due, owing or incurred on or prior to the date of termination.
- 2.6 This Guarantee is and shall at all times be a continuing security covering any and all sums owing from time to time to the Administering Authority by the Admission Body.
- 2.7 The liability of the Guarantor under this Guarantee shall not be reduced, discharged or otherwise affected by:
- 2.7.1 any intermediate payment in whole or in part of the Scheme Liabilities;
  - 2.7.2 any variation, extension, release, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Administering Authority may now or at any time have against the Admission Body or any other person in connection with the Scheme Liabilities;

- 2.7.3 any act or omission by the Administering Authority or any other person in taking up, perfecting or enforcing any security, indemnity or guarantee from or against the Admission Body or any other person or any such security or other right or remedy held by the Administering Authority becoming void, voidable or unenforceable on any ground whatsoever (including due to the negligence of the Administering Authority) and whether in whole or in part;
- 2.7.4 any grant of time, indulgence, waiver or concession (whether express or by conduct) to the Admission Body or any other person;
- 2.7.5 any termination, amendment, variation, novation, replacement or supplement of or to the Admission Agreement or the Regulations and the obligations of the Admission Body thereunder including without limitation any increase in or extension of the Scheme Liabilities;
- 2.7.6 any invalidity, unenforceability, illegality of the Admission Agreement in whole or in part;
- 2.7.7 any claim or enforcement from the Admission Body or any other person;  
or
- 2.7.8 any act or omission which would not have discharged or affected the liability of the Guarantor had it been a principal debtor instead of a guarantor or indemnifier or by anything done or omitted by any person which but for this provision might operate to discharge the Guarantor or otherwise reduced or extinguish its liability under this Guarantee.
- 2.8 The Administering Authority may enforce this Guarantee Agreement whether or not it has first:
- 2.8.1 notified the Guarantor or any other person of the default of the Admission Body;
- 2.8.2 made demand upon, or enforced any claim, right or remedy against the Admission Body or any other person;

- 2.8.3 taken action or obtained judgement in any Court against the Admission Body or any other person;
- 2.8.4 made or filed any claim in bankruptcy, liquidation, administration, or insolvency of the Admission Body or any other person; or
- 2.8.5 enforced or sought to enforce any security taken in respect of any of the obligations of the Admission Body in respect of the Scheme Liabilities.

### **3. REPRESENTATIONS AND WARRANTIES**

3.1 The Guarantor represents and warrants that:

- 3.1.1 it has the power and authority to enter into and perform the obligations under this Guarantee Agreement and has taken all necessary corporate action required to authorise its execution, delivery and performance;
- 3.1.2 the execution delivery and performance of the obligations contemplated under this Guarantee Agreement do not and will not contravene any of the Guarantor's constitutional documents or any law or regulation to which the Guarantor is subject;
- 3.1.3 this Guarantee Agreement when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
- 3.1.4 the execution, delivery and performance of this Guarantee Agreement will not cause the Guarantor to be in breach of any agreement or obligation binding on it;
- 3.1.5 to the best of its knowledge no material litigation or administrative proceedings before, by or of any court or governmental authority is pending which may affect its ability to perform its obligations under this Guarantee Agreement.

#### **4. PAYMENT**

- 4.1 Any claim made under this Guarantee Agreement shall be in writing and shall be conclusive evidence (and admissible as such) that any sum stated in it is properly due and payable to the Administering Authority in connection with it.
- 4.2 All sums payable by the Guarantor under this Guarantee Agreement shall be made in pounds sterling within seven (7) days of receipt of the Administering Authority's claim and shall be made without set-off or counterclaim and without any deduction or withholding whatsoever. If the Guarantor is obliged by law to make any deduction or withholding from any such payment, the amount due from the Guarantor shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Administering Authority receives a net amount equal to the amount that it would have received had no deduction or withholding been required to be made.
- 4.3 The Administering Authority may apply any sums received from the Guarantor as it in its absolute discretion from time to time decides and the Guarantor shall not and may not direct the application by the Administering Authority of any sums received by the Administering Authority from the Guarantor under any of the terms of this Guarantee Agreement.

#### **5. SEVERANCE**

- 5.1 The invalidity, unenforceability or illegality of any provision or part of a provision of this Guarantee Agreement shall not affect the validity, enforceability or legality of the other provisions.
- 5.2 In the event that any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, supplemented or otherwise amended, the provision shall apply with whatever modification is necessary to give effect to the intention of the parties.

## **6. VARIATIONS**

- 6.1 Save as is provided for herein no purported variation of this Guarantee Agreement shall be effective unless agreed by the Administering Authority and the same is evidenced in writing and signed by each party.

## **7. WAIVER**

- 7.1 Save where expressly otherwise provided, the failure or delay by any party to this Guarantee Agreement in exercising any right, power or remedy of that party under this Guarantee Agreement shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by any party to this Guarantee Agreement of any right, power or remedy under this Guarantee Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 7.2 Any waiver of a breach of, or default under, any of the terms of this Guarantee Agreement shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Guarantee Agreement.

## **8. ASSIGNMENT/TRANSFER**

- 8.1 The Administering Authority may assign the benefit of this Guarantee Agreement, by notice to the Guarantor, to any third party (the assignee). If the Administering Authority wishes to transfer all of its rights and liabilities under this Guarantee Agreement to an assignee then the Guarantor will, on receipt of notice to this effect from the Administering Authority, enter into a deed of novation with such assignee as the Administering Authority may require in order fully to transfer all of the Administering Authority's benefits and liabilities remaining under this Guarantee Agreement to such assignee. The Administering Authority shall give reasonable notice to the Guarantor of its wish to exercise its rights pursuant to this clause 8.1.
- 8.2 The Guarantor is prohibited from assigning any of its rights or transferring any of its obligations under this Guarantee Agreement and may not enter into any

transaction which may result in any of those rights or obligations passing to another person [without the prior written consent of the Administering Authority].

## **9. TERMINATION**

9.1 The Guarantor may terminate this Guarantee Agreement at any time with effect from the date specified in that notice (the "Termination Date") by giving a minimum of three calendar months' notice in writing to the Administering Authority.

9.2 Notwithstanding any notice issued by the Guarantor under clause 9.1, the Guarantor shall remain liable for any Scheme Liabilities the payment of which;

9.2.1 has become due from the Admission Body to the Administering Authority on or before the Termination Date; or

9.2.2 may become due, owing or incurred by the Admission Body to the Administering Authority in relation to any transaction or event occurring:

(a) on or before the Termination Date; or

(b) on or after the Termination Date in relation to any obligation arising or commitment assumed by the Admission Body under the Admission Agreement or the Regulations on or before the Termination Date.

## **10. NOTICES**

10.1 Any demand, notice or other communication given in connection with or required by this Guarantee Agreement shall be made in writing and shall be delivered by hand, or sent by recorded delivery to, the recipient at the address stated in this Guarantee Agreement or such other address as may be notified in writing from time to time.

10.2 Any such demand, notice or communication shall be deemed to have been duly served:

10.2.1 if delivered by hand, when left at the proper address for service PROVIDED that where such delivery occurs wither after 4:00 p.m. on a Business Day or on a day other than a Business Day service shall be deemed to occur at 10:00 a.m. on the next following Business Day; or

10.2.2 if sent by recorded delivery, two Business Days after being posted.

## **11. COUNTERPARTS**

11.1 This Guarantee Agreement may be executed in any number of counterparts and this shall have the same effect as if the signatures on the counterparts were on a single copy of this Guarantee Agreement.

## **12. THIRD PARTY RIGHTS**

12.1 Except where expressly provide to the contrary, the parties to this Guarantee Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

## **13. GOVERNING LAW**

13.1 This Guarantee shall be governed and construed in accordance with English law and the parties irrevocably submit to the jurisdiction of the English courts.

IN WITNESS WHEREOF the Administering Authority and the Guarantor have executed and delivered this Guarantee Agreement as a deed the day and year first before written.

## SCHEDULE 1B

### Specimen Extension Notice

To: Lancashire County Council

From: [Guarantor]

[DATE]

**BOND NUMBER: [NUMBER]**

We refer to the Agreement which is due to expire on [date].

We have been instructed by the [Admission Body] to [renew/amend] the Agreement. We now accordingly give notice that the Agreement shall be treated as renewed for a further period of [number] years and so that [date] shall become the Expiry Date.

[We [also] confirm that the Bond Amount shall be amended and from the date of this Extension Notice the new level shall be [[amount] pounds sterling (£)].

Save as amended by this Extension Notice, the Agreement shall remain in full force and effect.

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**Duly authorised for and on behalf of**

[Guarantor]

Admission Agreement (No Separate Scheme Employer) November 2014

## SCHEDULE 1C

### Specimen Payment Notice

To: [Guarantor]

From: Lancashire County Council

[DATE]

#### **BOND NUMBER: [NUMBER]**

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

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

We demand payment of the above amount within seven 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**

Admission Agreement (No Separate Scheme Employer) September 2014

## SCHEDULE 2

### List of Eligible Employees

Forename	Surname	NI Number	Active Member

Admission Agreement (No Separate Scheme Employer) September 2014