

**[AGREEMENT IN PRINCIPLE REACHED
WITH GMPF AND HMT – FORMAL
AGREEMENTS TO THIS FORM OF
GUARANTEE BEING SOUGHT]**

GUARANTEE

DATED

By

**THE SECRETARY OF STATE FOR JUSTICE
as Guarantor**

relating to an

Admission Agreement

entered into by

TAMESIDE METROPOLITAN BOROUGH COUNCIL

and

[Community Rehabilitation Company]

**in relation to participation in the Local Government Pension Scheme
of employees engaged in the provision of probation services
in geographic area [●]/under contract [●]**

ALLEN & OVERY

Allen & Overy LLP

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THIS DEED OF GUARANTEE is dated _____ and is made **BETWEEN**:

- (1) **THE SECRETARY OF STATE FOR JUSTICE** acting through the National Offender Management Service of 70 Petty France, London, SW1H 9EX (the **Guarantor**);
- (2) **TAMESIDE METROPOLITAN BOROUGH COUNCIL** of Council Offices, Wellington Road, Ashton-under-Lyne, OL6 6DL (the **Administering Authority**); and
- (3) [**Community Rehabilitation Company**] of [●] [(**CRC**)].

BACKGROUND

- (A) The Administering Authority is an administering authority within the meaning of the Regulations. It administers and maintains the Fund in accordance with the Regulations.
- (B) [CRC] is [to become] a transferee admission body within the meaning of paragraph 1(e) of Part 3 of Schedule 2 of the Regulations admitted pursuant to the Contract.
- (C) The Guarantor has entered into the Contract with the [CRC] for the provision of probation services in [●]. Pursuant to the Contract employees of the [CRC] will continue as members of the Scheme.
- (D) Subject to the provision of a guarantee in the form of this Deed, the Administering Authority and [CRC] intend to enter into the Admission Agreement.
- (E) The Guarantor has agreed to enter into this Deed as a guarantee granted in favour of the Administering Authority in a form acceptable to the Administering Authority and to [CRC].

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Deed:

Admission Agreement means the admission agreement dated [●] [2014] between the Administering Authority and [CRC] to allow [CRC] to be admitted to the Scheme and to participate in the Fund.

Business Day means any day other than a Saturday or a Sunday or a Public or Bank Holiday in England.

Contract means the Services Agreement between the Guarantor and [CRC] dated [●].

Commencement Date means the commencement date of the Contract being [●].

Fund means the Greater Manchester Pension Fund.

Party means a party to this Deed.

Payment Notice means a notice substantially in the form of the notice of Schedule 1.

Regulations means The Local Government Pension Scheme Regulations 2013.

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Relevant Event means if any of the following occurs in respect of [CRC]:

- (a) an order for its winding-up, administration or dissolution is made;
- (b) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it;
- (c) its shareholders, directors or other officers appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar office; or
- (d) any other analogous step or procedure is taken in any jurisdiction.

Reservations means:

- (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of the court and damages may be regarded as an adequate remedy;
- (b) the limitation on enforcement as a result of laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws affecting the rights of creditors generally;
- (c) the statutory time-barring of claims;
- (d) defences of set off or counterclaim;
- (e) rules against penalties and similar principles;
- (f) the fact that security which is described as fixed security may in fact be floating security;
- (g) the possibility that an undertaking to assume liability for, or indemnify a person against, non-payment of stamp duty may be void;
- (h) the fact that a court may refuse to give effect to a purported contractual obligation to pay costs imposed upon another person in respect of costs of an unsuccessful litigation brought against that person or may not award by way of costs all of the expenditure incurred by a successful litigant in proceedings brought before that court or that a court may stay proceedings if concurrent proceedings based on the same grounds and between the same parties have previously been brought before another court;
- (i) steps for perfection not required by the terms of this Deed to be taken,

and any other reservations or qualifications of law contained in any legal opinion delivered to the Administering Authority or the Guarantor in respect of this Deed.

Scheme means the Local Government Pension Scheme established and governed by the Regulations under Sections 7 and 12 of the Superannuation Act 1972.

Scheme Liabilities means all employer and employee contributions, payments and other sums properly due from [CRC] to the Fund under the Admission Agreement and/or the Regulations (including for the avoidance of doubt any revised contributions due under Regulation 64 of the Regulations).

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1.2 Construction

- (a) Capitalised terms defined in the Regulations have, unless expressly defined in this Deed, the same meaning in this Deed.
- (b) This Deed includes a heading at the start of each Clause which outlines its provisions. These are included for information only.
- (c) Any reference in this Deed to any law or piece of legislation shall include any subsequent amendment to it and any ancillary legislation made under it.

2. GUARANTEE

The Guarantor hereby unconditionally and irrevocably:

- (a) guarantees upon the occurrence of a Relevant Event and subject to the terms of this Deed, to pay to the Administering Authority immediately on demand by the Administering Authority for the benefit of the Fund any Scheme Liabilities which are unpaid by reason of non-payment by [CRC], as if the Guarantor was the principal obligor; and
- (b) agrees that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Administering Authority for the benefit of the Fund immediately on demand against any costs, loss or liability it incurs as a result of [CRC] not paying any Scheme Liabilities which would, but for such unenforceability, invalidity or illegality, have been payable, on the date when such Scheme Liabilities would have been due. The amount payable by the Guarantor under this indemnity will be equal to the amount it would have had to pay under this Clause if the amount claimed had been recoverable on the basis of a guarantee.

3. CLAIMS, PAYMENTS AND RIGHTS

3.1 Claims and payments

- (a) Any claim by the Administering Authority shall be made by the service of a Payment Notice, supported by such evidence as the Secretary of State may reasonably require, including but not limited to evidence of compliance by the Administering Authority with its obligations under Clause 3.5(b) of this Deed.
- (b) Such Payment Notice and supporting evidence shall be accepted by the Guarantor as conclusive evidence for all purposes that the amount claimed is due to the Fund.
- (c) The Guarantor shall pay the sum demanded in the relevant Payment Notice within 30 Business Days of receipt of that Payment Notice.
- (d) All sums paid by the Guarantor in accordance with this Deed shall be held and applied by the Administering Authority for the purpose of discharging the Scheme Liabilities. Any sums not so applied within three calendar months of receipt by the Administering Authority shall be returned to or held to the order of the Guarantor.

3.2 Continuing guarantee

Subject to Clause 4 (Termination), the obligations of the Guarantor hereunder shall be continuing obligations notwithstanding any settlement of account and, in particular but without limitation, shall

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not be considered satisfied by any intermediate payment or satisfaction of all or any of the Scheme Liabilities.

3.3 Waiver of defences

The obligations of the Guarantor under this Deed shall not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release, diminish or prejudice any of its obligations under this Deed. In particular (but without limitation) the obligations of the Guarantor under this Deed shall not be affected by (i) any lack of validity or enforceability of, or any amendment to, the Scheme Liabilities or the Admission Agreement, (ii) the granting of any time, indulgence or concession by any party to [CRC] or (iii) any insolvency or similar proceedings in relation to [CRC].

3.4 Reinstatement

- (a) If any discharge, release or arrangement is made in respect of the Scheme Liabilities in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Clause will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- (b) The Administering Authority may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

3.5 Recourse

- (a) Subject to Clause 3.5(b) below, the Guarantor waives any right it may have of first requiring any Party (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person before claiming from the Guarantor under this Clause.
- (b) [Before serving a Payment Notice under this Deed, the Administering Authority shall first:
 - (i) use its reasonable endeavours to recover from [CRC] any Scheme Liabilities that are due to it but have not been paid (provided that the Administering Authority will not be required under this Clause to commence proceedings against [CRC]);
 - (ii) comply with any requirement to notify the Pensions Regulator of the non-payment of Scheme Liabilities; and
 - (iii) notify the Guarantor of the non-payment of Scheme Liabilities as soon as reasonably practicable after becoming aware of the non-payment.
- (c) This waiver applies irrespective of any law or any provision of the Admission Agreement, the Contract or any related agreement to the contrary.]

[Explanatory note: final terms of the payment notice and guarantee conditions to be formally agreed with GMPF and HMT]

3.6 Non-competition

Unless:

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- (a) all amounts which may be or become payable by the [CRC] to the Fund under the Admission Agreement have been irrevocably paid in full; or
- (b) the Administering Authority otherwise directs,

the Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations under this Deed or by reason of any amount being payable, or liability arising, under this Deed:

- (i) to be indemnified by [CRC];
- (ii) to claim any contribution from any other guarantor of the [CRC's] obligations or liabilities to make payments to the Fund;
- (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Administering Authority in respect of the [CRC's] obligations or liabilities to make payments to the Fund under the Admission Agreement, or under or pursuant to any other guarantee or security taken in connection with such obligations or liabilities of the [CRC] by the Administering Authority;
- (iv) to bring legal or other proceedings for an order requiring the [CRC] to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under this Deed;
- (v) to exercise any right of set-off against the [CRC]; and/or
- (vi) to claim or prove as a creditor of the [CRC] in competition with the Administering Authority.

3.7 The Guarantor must hold in trust for and immediately pay or transfer to the Administering Authority (or in accordance with any direction given by the Administering Authority under this clause) any payment or distribution or benefit of security received by it contrary to this clause.

3.8 Additional security

The guarantee contained in this Deed is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Administering Authority

3.9 Enforcement and preservation costs

The Guarantor shall, within 30 Business Days of demand, pay to the Administering Authority the amount of all reasonable costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under this Deed and any proceedings instituted by or against the Administering Authority as a consequence of taking, holding or enforcing this Deed.

3.10 Guarantor default

The Guarantor shall, within 30 Business Days of demand, indemnify the Administering Authority against all reasonable costs and expenses, loss or liability incurred by it as a result of any default by the Guarantor in the performance of any of the obligations expressed to be assumed by it in this Deed.

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4. REPRESENTATIONS

4.1 Representations

The representations set out in this Clause are made by the Guarantor.

4.2 Powers and authority

It has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of, this Deed and the transactions contemplated by this Deed.

4.3 Legal validity

Subject to the Reservations, the obligations expressed to be assumed by it in this Deed are legal, binding, valid and enforceable obligations.

4.4 Non-conflict

The entry into and performance by it of, and the transactions contemplated by, this Deed do not conflict with any law or regulation applicable to it

4.5 Authorisations

All authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Deed have been obtained or effected (as appropriate) and are in full force and effect.

4.6 Times for making representations

The representations set out in this Clause are made by the Guarantor on the date of this Deed.

5. TERMINATION

- (a) This Deed shall terminate (and the obligations and liabilities of the Guarantor shall cease and determine absolutely) following the settlement of all Scheme Liabilities due in respect of [CRC]'s participation in the Scheme.
- (b) For the avoidance of doubt this Deed may extend beyond the termination of the Admission Agreement.

6. CHANGES TO THE PARTIES

No Party may assign or transfer any of its rights and obligations under this Deed.

7. NOTICES

7.1 Communications in writing

Any communication to be made under or in connection with this Deed must be made in writing and, unless otherwise stated, may be made by fax or letter.

7.2 Addresses

- (a) The contact details of the Guarantor for this purpose are:

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Address: National Offender Management Service
70 Petty France
London SW1H 9EX
Fax number: [●]
E-mail: [●]
Attention: [Director of Finance].

(b) The contact details of [CRC] for this purpose are:

Address: [●]
Fax number: [●]
E-mail: [●]
Attention: [●].

(c) The contact details of the Administering Authority for this purpose are:

Address: [●]
Fax number: [●]
E-mail: [●]
Attention: [●].

(d) Any Party may change its contact details by giving five Business Days' notice to each other Party.

7.3 Delivery

(a) Except as provided below, any communication made or delivered by one Party to another under or in connection with this Deed will only be effective:

- (i) if by way of fax, when received in legible form; or
- (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 7.2 (Addresses), if addressed to that department or officer.

(b) Any communication to be made or delivered to the Guarantor will be effective only when actually received by the Guarantor addressed as set out in clause 6.2.

8. WAIVER OF IMMUNITY

The Guarantor irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought by the Administering Authority against it in relation to this Deed and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
- (c) waives all rights of immunity in respect of it or its assets.

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9. AMENDMENT

Any term of this Deed may be amended by deed, with the consent in writing of all the Parties and any such amendment or will be binding on all the Parties.

10. COUNTERPARTS

This Deed may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

11. THIRD PARTY RIGHTS

A person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

12. GOVERNING LAW

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

13. JURISDICTION

- (a) The English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a **Dispute**).
- (b) The Parties agree that the English courts are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary

This Deed has been entered into as a deed on the date stated at the beginning of this Deed.

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SCHEDULE 1

SPECIMEN PAYMENT NOTICE

To: **SECRETARY OF STATE FOR JUSTICE**
c/o The Director of Finance
National Offender Management Service
70 Petty France
London SW1H 9EX

From: **TAMESIDE METROPOLITAN BOROUGH COUNCIL**

[DATE]

Guarantee dated [●] between the Secretary of State for Justice in favour of [CRC] relating to an Admission Agreement entered into by Tameside Metropolitan Borough Council (the Guarantee)

1. We refer to the Guarantee.
2. Capitalised terms defined in this payment notice have, unless expressly defined in this payment notice, the same meaning in this payment notice.
3. We certify that a Relevant Event has occurred in relation to [CRC] and that the sum of [●] pounds sterling (£) is properly due in respect of the Scheme Liabilities.
4. [We confirm that we have complied with the terms of clause 3.5(b) (Recourse) of the Guarantee.]
5. We demand payment of the above amount under and in accordance with the Guarantee.
6. 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 the [●] Administering Authority

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SIGNATORIES

GUARANTOR

THE CORPORATE SEAL of:)
THE SECRETARY OF STATE)
FOR THE MINISTRY OF JUSTICE)
Hereunto affixed is authenticated by:)

Authorised by the Secretary of State

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ADMINISTERING AUTHORITY

THE COMMON SEAL of:)
TAMESIDE METROPOLITAN BOROUGH)
COUNCIL was hereunto affixed in)
the presence of:)

.....

Borough Solicitor

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[CRC]

THE COMMON SEAL of:)
[CRC] was affixed in)
the presence of:)

Name:

Address:
.....
.....