



DATED _____ 201

BETWEEN

(1) [**GUARANTOR**]

And

**(2) THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF ENFIELD**

PARENT COMPANY GUARANTEE
RELATING TO THE CONTRACT FOR THE PROVISION OF [INSERT DESCRIPTION]

London Borough Of Enfield
Civic Centre
PO Box 60
Silver Street
Enfield
Middlesex
EN1 3XA

BETWEEN

- (1) [] **Guarantor** [] (Company number []
of []
(the "**Guarantor**"); and in favour of [] insert address)
- (2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ENFIELD**
acting by the Council of the London Borough Enfield, Civic Centre, PO Box 50,
Silver Street, Enfield, London EN1 3XA ("the Authority")

Whereas

- (A) By a Contract for the provision of [INSERT DESCRIPTION] dated on [] (the "**Contract**" which term includes all amendments to, variations of or supplements to it from time to time in force) between (1) the Authority and (2) [INSERT DETAILS OF OTHER PARTY TO CONTRACT] (the **Contractor**), the Contractor undertook or will undertake to provide [INSERT DESCRIPTION OF SERVICES] (the **Services**) more particularly described in the Contract.
- (B) The Guarantor has agreed to guarantee the due performance by the Contractor of its obligations under the Contract.
- (C) The Guarantor is the UK parent company of the Contractor.
- (D) The Contractor is a wholly-owned subsidiary of the Guarantor.
- (E) The Guarantor has agreed to enter into this Guarantee on the following terms and conditions.

It is agreed

1 Definition and Interpretations

- 1.1 In this Guarantee the following words and expressions shall have the meanings set out below:
- 1.1.1 "**Contract**" has the meaning set out in Recital A above;
- 1.1.2 "**Duly Authorised Representatives**" means a person designated as such by a Party from time to time as notified in writing to the other to act as the representative of the Party for all purposes connected with the Guarantee, including any authorised representative of such person

- 1.1.3 **“Guaranteed Amount”** means any and all sums due, owing or outstanding from the Contractor to the Authority from time to time under the Contract as varied and amended from time to time or arising from its breach or non-performance;
- 1.1.4 **“Parties”** means the parties to this Guarantee and their successors and assignees and references to a “Party” mean one of the parties to this Guarantee and its successors and assignees.
- 1.1.5 **“Person”** includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person’s successors and permitted assigns;
- 1.1.6 **“Proceedings”** means any suit, action or proceedings arising out of or in connection with this Guarantee;
- 1.1.7 **“Working Days”** means Monday to Friday, excluding public holidays in England
- 1.2 Words importing:
- 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 the masculine includes the feminine or the neuter and vice versa;
 - 1.2.3 a reference in this Guarantee to any Clause is, unless otherwise provided, a reference to such clause of this Guarantee;
 - 1.2.4 any reference to this Guarantee or to any other document shall include any permitted variation, amendment or supplement to such document;
 - 1.2.5 any reference to any enactment, order, regulation or other such similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any European Union instrument) as amended, replaced, consolidated or re-enacted;
 - 1.2.6 headings are for convenience of reference only; and
 - 1.2.7 except where otherwise stated all expressions shall bear the same meaning as under the Contract.

2 Guarantee

2.1 In consideration of the Authority entering into the Contract with the Contractor, the Guarantor:

2.1.1 as sole and primary obligor guarantees the due and punctual performance by the Contractor of each and all of its duties, undertakings or obligations to the Authority under or in connection with the Contract when and if such duties, undertakings and obligations shall become due and performable according to the Contract and if the Contractor fails to pay any Guaranteed Amount, debt, damages, interest or costs due from the Contractor to the Authority under or in connection with the Contract, the Guarantor shall as sole and principal debtor pay such amount to the Authority provided always that the Guarantor's liability under this Guarantee in respect of any matter shall not exceed that of the Contractor under the Contract in respect of that matter and, for the avoidance of doubt, the Guarantor shall (for the purposes of ascertaining the extent of the Contractor's liability under the Contract and, accordingly, the extent of the Guarantor's liability under this Guarantee) be entitled to rely on the same defences (including any rights of set-off or limitations of liability) as those which the Contractor is entitled to raise under the Contract; and

2.1.2 indemnifies the Authority on demand against any loss or liability suffered by it if any duty, undertaking or obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the duty, undertaking or obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Contractor's liability would have been if the duty, undertaking or obligation guaranteed had not become unenforceable, invalid or illegal.

2.2 Subject to the terms of this Guarantee and without prejudice to Clause 2.1 of this Guarantee, the Guarantor as a separate obligation unconditionally and irrevocably undertakes as primary obligor that should any Guaranteed Amount not be recoverable from the Contractor, on receiving a first written demand from the Authority, it shall pay:

2.2.1 the Guaranteed Amount; and

2.2.2 (costs and expenses (including legal and out-of-pocket expenses and any Value Added Tax on such costs and expenses, to the extent that such Value Added Tax is a cost to the Authority) reasonably and properly incurred by the Authority in enforcing its rights under this Guarantee due to the failure by the Guarantor to comply with its obligations under this Guarantee; these shall include those incurred in claiming and recovering Guaranteed Amounts and enforcing any award in respect of the Guaranteed Amounts.

- 2.3 The guarantee given by the Guarantor under this Guarantee shall be a primary obligation of the Guarantor and accordingly the Authority shall not be obliged before enforcing this Guarantee to take any action in any court or adjudication proceedings against the Contractor, to make any claim against or any demand of the Contractor, to enforce any other security held by it in respect of the obligations of the Contractor under the Contract or to exercise, levy or enforce any distress or other process of execution against the Contractor. If the Authority brings any proceedings against the Contractor, the Guarantor will be bound by any findings of fact, interim or final award or judgement made by an adjudicator, expert or the court in such proceedings.
- 2.4 All sums payable by the Guarantor under this Guarantee shall be paid to the Authority in pounds sterling in full, free of any present or future taxes, levies, duties, charges, fees or withholdings. If the Guarantor is compelled by law to make any deduction or withholding, the Guarantor will gross up the payment so that the net sum received by the Authority will be equal to the full amount that the Authority would have received had no such deduction or withholding been made.
- 2.5 The Guarantor shall pay interest on any amount due under this Guarantee from the date of demand until the date of payment in full (as well as before any judgement) calculated on a daily basis of two (2) per cent per annum above the base rate for the time being of the Bank of England.

3 Continuing Guarantee

- 3.1 The Guarantee is a continuing obligation and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Contractor, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Contract shall have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Authority may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security and without taking any steps or proceedings against the Contractor.
- 3.2 The obligation of the Guarantor to comply with the terms of this Guarantee shall not be reduced, discharged or otherwise adversely affected. The Guarantor agrees that it shall not in any way be released from liability under this Guarantee by any act, omission, matter or other thing whereby (in the absence of this provision) the Guarantor would or might be released in whole or in part from liability under this Guarantee including, without limitation and whether or not known to the Guarantor:
- 3.2.1 any arrangement or composition made between the Contractor and the Authority (by operation of law or otherwise); or

- 3.2.2 any alteration in the obligations undertaken by the Contractor whether by way of any termination, addendum or variation, novation or otherwise; or
 - 3.2.3 any variation, extension, compromise, discharge, dealing with, exchange or renewal of any right or remedy which the Authority may have now or in the future against the Contractor or any other person in respect of the Guaranteed Amounts; or
 - 3.2.4 any act or omission by the Authority or any other person in taking up, perfecting or enforcing or not enforcing any security or guarantee from or against the Contractor or any other person; or
 - 3.2.5 any waiver, forbearance or indulgence by the Authority relating to the obligations of the Contractor or Guarantor whether as to payment, time, performance or any other matter; or
 - 3.2.6 the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Contractor or any other person; or
 - 3.2.7 any unenforceability, illegality, invalidity, irregularity, frustration or discharge of any of the provisions of the Contract or any of the Contractor's obligations under the Contract so that this Guarantee shall be construed as if there were no such unenforceability, illegality or invalidity; or
 - 3.2.8 any legal limitation, disability, incapacity or other circumstances relating to the Contractor, or any other person or the want of authority of any director, secretary or other official appearing to be acting for the Contractor; or
 - 3.2.9 any change in relationship between the Guarantor and the Contractor; or
 - 3.2.10 the dissolution, amalgamation, reconstruction, reorganisation, change in status, name, style, function, constitution, control or ownership, insolvency, liquidation, composition of creditors, moratorium or the appointment of an administrator or receiver of the Contractor or any other person.
- 3.3 For the purposes of the liability of the Guarantor to the Authority under this Guarantee, all sums from time to time owing to the Authority by the Contractor or which would have become owing were it not for the insolvency, liquidation, composition of creditors, moratorium or the appointment of an administrator or receiver of the Contractor shall notwithstanding the insolvency, liquidation, composition of creditors, moratorium or the appointment of an administrator or receiver of the

Contractor be deemed to continue to be owing to the Authority by the Contractor until actually paid.

3.4 All Guaranteed Amounts and any costs and expenses payable pursuant to Clause 2.2(b) by the Guarantor shall be paid to the Authority in full:

(a) without any set-off or counterclaim; and

(b) free and clear of all deductions or withholdings except for those as may be required by law.

3.5 If any deduction or withholding is required by any law in respect of any payment due from the Guarantor under this Guarantee the sum payable by the Guarantor shall be increased so that, after making the minimum deduction or withholding so required, the Guarantor shall pay to the Authority on the due date for payment, a net sum at least equal to the sum which it would have received had no such deduction or withholding been required to be made.

4 Prohibition on Competition with the Authority

4.1 The Guarantor must not at any time, without the Authority's prior written consent:

4.1.1 be entitled to share in any security held by the Authority or in any money received or receivable by the Authority; or

4.1.2 be entitled to any right of subrogation or otherwise to stand in the place of the Authority in respect of any security or money or other right or claim; or

4.1.3 in competition with the Authority take any step to enforce any indemnity, right of set off or counter-claim or other right or claim against the Contractor; or

4.1.4 in competition with the Authority, prove in, or otherwise exercise any right in connection with, the insolvency of the Contractor provided that if required by the Authority the Guarantor must prove in any such bankruptcy, liquidation or insolvency and must hold the benefit and all proceeds of such proof on trust for the Authority; or

4.1.5 without prejudice to any other provisions of this Clause 4 take any step to enforce any right as creditor of the Contractor in competition with the Authority.

4.2 If despite the provisions of Clauses 4.1.1 – 4.1.5 the Guarantor holds or receives any such security, moneys or property, it shall hold such security, money or property on trust for the Authority and it shall forthwith pay or transfer such amounts to the Authority to be applied towards satisfaction of the Guarantor's obligations under this Guarantee.

5 Miscellaneous

The Guarantor by this Deed authorises the Contractor to agree to make any addendum or variation to the Contract, the due and punctual performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this Guarantee.

6 Priority of Claims against the Contractor

Until all amounts which may be or become payable under or in connection with the Contract or this Guarantee have been irrevocably paid in full:

6.1 the Guarantor shall not, in respect of any payment made or liability arising pursuant to this Guarantee, effect or seek to effect any recovery from the Contractor, whether by receipt of money or set-off or proof of debt or enforcement of security or otherwise;

6.2 the Guarantor shall not hold any security from the Contractor in respect of this Guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall be promptly transferred to the Contractor; and

6.3 the Guarantor shall not exercise any rights of subrogation it may have against the Contractor or any rights to prove in the liquidation of the Contractor other than in accordance with the directions of the Authority.

7 Assignment

The Authority may without the consent of the Guarantor assign or charge the benefit of this Guarantee to any person to whom the Authority lawfully assigns, novates or charges the benefit of the Contract and reference to the Authority shall include its assignees. Such assignment, novation or charge shall not release the Guarantor from liability under this Guarantee.

8 Exercise of Rights, Powers and Privileges

8.1 No delay by, or omission of, the Authority in exercising any right, power or privilege hereunder shall impair any such right, power or privilege or be construed as a waiver of such or any other right, power or privilege by the Authority.

- 8.2 No single and partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other such right power or privilege by the Authority.
- 8.3 The rights and remedies of the Authority herein provided are cumulative and not exclusive of any rights or remedies provided by law.

9 Representations and Warranties

- 9.1 The Guarantor warrants and confirms to the Authority that:
- 9.1.1 it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation under company no. [number], possesses the capacity to sue and be sued in its own name and has the power to carry on its business and to own its property and other assets;
 - 9.1.2 it has the power to enter into this Guarantee and to perform the obligations expressed to be assumed by it or contemplated by this Guarantee;
 - 9.1.3 it has been duly authorised to enter into this Guarantee;
 - 9.1.4 it has taken all necessary corporate action to authorise the execution, delivery and performance of this Guarantee;
 - 9.1.5 it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which may have a material effect on its liability under this Guarantee; and
 - 9.1.6 no proceedings or other steps have been taken (nor to the best of knowledge of the Guarantor threatened) for its winding up or dissolution or the appointment of a receiver, administrative receiver, administrator, liquidator, judicial factor, manager, trustee or similar officer in relation to any of its assets or revenues.
- 9.2 The Guarantor warrants and undertakes to the Authority that it shall take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this Guarantee and to implement the provisions of this Guarantee.
- 9.3 The Guarantor warrants and confirms to the Authority that it has not entered into this Guarantee in reliance upon, nor has it been induced to enter into this Guarantee by any representation, warranty or undertaking made by or on behalf of the Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Guarantee.

- 9.4 These warranties representations and undertakings given in this Clause 9 shall continue so long as this Guarantee continues in force
- 9.5 The Guarantor acknowledges having received a copy of the Contract and confirms its acceptance of the provisions of the Contract as being the subject matter of this Guarantee.

10 Severability

- 10.1 If a term of this Guarantee is or becomes illegal, invalid or unenforceable in any respect and in any jurisdiction, including as a result of a change in law, by any court of competent jurisdiction, it will not affect:
- (a) the legal validity or enforceability in that jurisdiction of any other term of this Guarantee or
 - (b) the legal validity or enforceability in any other jurisdiction of that or any other term under this Guarantee.
- 10.2 If any term of this Guarantee does become invalid, illegal or unenforceable, the parties agree to substitute for such invalid, illegal or unenforceable term a new term which gives effect to the intention of the invalid, illegal or unenforceable term to the fullest possible extent.
- 10.3 In the event of a holding or invalidity so fundamental as to prevent the accomplishment of the purposes of this Guarantee, the Authority and the Guarantor shall immediately commence good faith negotiations to remedy such invalidity.

11 Waivers

- 11.1 Without prejudice to Clause 7, the rights of the Authority under this Guarantee may be waived only in writing and specifically, and any delay in exercising or non-exercise of any right is not a waiver of that right.
- 11.2 No act or omission of either Party shall by itself amount to a waiver of any right, default, breach or remedy unless expressly stated by that Party in writing. No failure or delay in the exercise or non-exercise by either Party of any of their respective rights or remedies under or in connection with this Guarantee nor anything said, done or written by any person, or anything omitted to be said, done or written by any person including any employee or agent of either Party shall in any way affect the rights of that Party, or modify, affect, reduce or extinguish the obligations and liabilities of either Party under this Guarantee, or be deemed to be a waiver or release of any of the rights or remedies of either Party.
- 11.3 No waiver in respect of any right, default or breach or remedy shall operate as a waiver in respect of any other right or remedy.
- 11.4 No waiver under this Clause 11 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or

provisions of this Guarantee unless (and then only to the extent) expressly stated in that waiver.

- 11.5 Where in this Guarantee any obligation of a Party is to be performed in a specified time limit that obligation shall be deemed to continue after that time limit if the Party fails to comply with that obligation within the time limit.

12 Amendments

12.1 This Guarantee may not be amended or varied except by the written agreement of the duly authorised representatives of the Parties.

12.2 Any purported amendment or variation to this Guarantee which does not satisfy the terms of this Clause 12 shall be of no effect.

[insert relevant attestation clauses – seek advice from Legal Services]