

SCHEDULE 25

Pensions

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1. ADMISSION TO WEST MIDLANDS PENSION SCHEME

- 1.1 The Service Provider shall seek admission to the West Midlands Pension Fund in respect of the Eligible Employees and for this purpose will ensure that from the Service Commencement Date it and/or each relevant Service Provider Party shall become an admission body in accordance with Regulation 6 of the Local Government Pension Scheme (Administration) Regulations.
- 1.2 The Service Provider shall before the Service Commencement Date execute or procure that each relevant Service Provider Party executes an Admission Agreement substantially in the form set out in annexure 9 and procures the delivery of an executed Parent Company Guarantee substantially in the form set out in annexure 10 which will have effect from the Service Commencement Date and which shall be limited to Eligible Employees subject to paragraph 1.3.
- 1.3 Any Eligible Employee who is not a member of the Local Government Pension Scheme at the Service Commencement Date will only have the option to join the Local Government Pension Scheme within the period of twelve (12) Months from the Service Commencement Date. The Authority and the Service Provider will co-operate with each other in ensuring that such Eligible Employees are informed that they will not be able to join the Local Government Pension Scheme after the expiry of this period, and are given reasonable opportunities to join the Local Government Pension Scheme during this period.
- 1.4 The Authority shall before the Service Commencement Date execute the Admission Agreement referred to in paragraph 1.2 and shall use reasonable endeavours to ensure that the Administering Authority executes such Admission Agreement before the Service Commencement Date.
- 1.5 The Service Provider shall not and shall ensure that any relevant Service Provider Party shall not terminate any Admission Agreement except with the prior written consent of the Authority and after consultation with all the Eligible Employees who are members of the Local Government Pension Scheme.

2. ADMISSION AGREEMENT – FUNDING

- 2.1 The Authority shall procure that for the purposes of the Admission Agreement the Eligible Employees' benefits accrued under the Local Government Pension Scheme prior to the Service Commencement Date are fully funded as at the Service Commencement Date, as determined by the Actuary to the West Midlands Pension Fund.
- 2.2 The Authority shall be responsible for any deficiency in the Local Government Pension Scheme funding in respect of the Eligible Employees calculated on termination of the Admission Agreement in accordance with Regulation 38 of the Local Government Pension Scheme (Administration) Regulations provided that this is:
 - 2.2.1 subject to payment of contributions by the Service Provider or Service Provider Party in accordance with paragraphs 2.3 and 3.1.1; and
 - 2.2.2 where the contribution paid by the Service Provider or the Service Provider Party has been less than the Priced Employer's Contribution Rate (as defined by paragraph 3.1) the deficiency payable by the Authority shall be abated by the difference between the contributions previously paid by the Service Provider or Service Provider Party as appropriate and the contributions that would have been payable if the employer contributions had equalled the Priced Employer's Contribution Rate.
- 2.3 Where the Service Provider or Service Provider Party:
 - 2.3.1 grants an early retirement request in relation to an Eligible Employee (including where such Eligible Employee is a deferred member of the Local Government Pension Scheme);
 - 2.3.2 grants an augmentation of benefits in relation to an Eligible Employee which is in addition to any augmentation which an Eligible Employee is entitled to as of right under the Local Government Pension Scheme;
 - 2.3.3 reduces or waives any contributions due from any Eligible Employee;
 - 2.3.4 awards pay increases to Eligible Employees which in aggregate exceed the rate allowed for pay increases in the last valuation of the Local Government Pension Scheme prior to the award of the pay increase in question;

- 2.3.5 terminates the employment contract of an Eligible Employee who is aged fifty (50) or over at the time by reason of redundancy or in the interests of efficiency (or otherwise allows such employee to retire on those grounds);
- 2.3.6 fails to procure that all Eligible Employees who were prior to the Service Commencement Date aged at least forty five (45) and were members of the Local Government Pension Scheme are substantially employed in the Services following the Service Commencement Date;
- 2.3.7 fails to act reasonably in certifying matters in respect of an Eligible Employee listed in accordance with the Admission Agreement, in accordance with a procedure agreed with the Authority's Pensions Manager,

the cost of such action shall be assessed by the Actuary to the Local Government Pension Scheme and shall be payable by the Service Provider or Service Provider Party on such basis as is agreed between the Service Provider or Service Provider Party, the Authority and the West Midlands Pension Fund (and in the absence of agreement, as determined by the West Midlands Pension Fund). For the avoidance of doubt, the cost of any action described in paragraph 2.3 shall be met in full by the Service Provider or Service Provider Party, and shall not form part of the ongoing employer contribution rate payable in accordance with Regulation 38 of the Local Government Pension Scheme (Administration) Regulations, and shall not be subject to paragraphs 2.1, 2.2 and 3.

3. **ADMISSION AGREEMENT – CONTRIBUTIONS**

- 3.1 Subject to paragraphs 2 and 5, the Service Provider or Service Provider Party shall pursuant to the Admission Agreement pay to the Administering Authority for the credit of the Local Government Pension Scheme such employer contributions as are required under Regulation 39 of the Local Government Pension Scheme (Administration) Regulations provided that:
 - 3.1.1 subject to paragraph 3.1.3 if the rate payable under Regulation 39 of the Local Government Pension Scheme (Administration) Regulations in respect of Eligible Employees is less than the rate of [REDACTED] (the "**Priced Employer's Contribution Rate**") of pensionable pay (as defined by Regulation 4 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007) then [REDACTED]

[REDACTED]

3.1.2 subject to paragraph 3.1.3, if the rate payable under Regulation 39 in respect of Eligible Employees is over the Priced Employer's Contribution Rate,

[REDACTED]

3.1.3 where the Service Provider or a Service Provider Party have entered into more than one (1) Admission Agreement and the rate payable under Regulation 39 in respect of Eligible Employees is not the same under each Admission Agreement, then for the purposes of the operation of paragraphs 3.1.1 and 3.1.2, the rate payable under Regulation 39 shall

[REDACTED]

Where the contribution rate payable under Regulation 39 of the Local Government Pension Scheme (Administration) Regulations is not calculated on the basis described in this paragraph 3, the Unitary Charge shall be adjusted to give effect to the provisions of paragraph 3.

4. **INDEMNITY FOR A BREACH OF THE ADMISSION AGREEMENT**

4.1 The Service Provider shall and shall ensure that any Service Provider Party shall comply with the terms of the Admission Agreement including the obligation to make all payments under the Admission Agreement by the due date for payment.

4.2 The Service Provider hereby indemnifies the Authority from and against all Loss suffered or incurred by it which arises from any breach by the Service Provider or any Service Provider Party of the terms of the Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Agreement (howsoever caused). The indemnity in this paragraph 4.2 is subject to the provisions of paragraphs 2 and 3.

5. RIGHT OF SET OFF

The Authority shall have a right to set off against any payments due to the Service Provider Party under this Agreement an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the Local Government Pension Scheme Regulations) due from the Service Provider or from any relevant Service Provider Party (as applicable) under the Admission Agreement.

6. CESSATION OF ADMITTED BODY STATUS

In the event that the Service Provider or Service Provider Party as appropriate ceases to be an Admitted Body after the Service Commencement Date then:

- 6.1 the Service Provider shall or shall ensure that the Service Provider Party shall enter into discussions with the Authority and Employee Representatives to attempt to mitigate the effects (if any) of the Service Provider or Service Provider Party ceasing to be an Admitted Body;
- 6.2 the Service Provider shall or shall ensure the Service Provider Party as appropriate shall continue to take all reasonable steps to become an Admitted Body and shall comply with paragraph 7;
- 6.3 in the event that the Service Provider or Service Provider Party does become an Admitted Body pursuant to paragraph 6.2 then the Service Provider shall and shall ensure that the Service Provider Party shall in respect of those Eligible Employees who have become members of the Broadly Comparable Pension Scheme under paragraph 6.2 allow all Eligible Employees to elect whether to become or remain members of the West Midlands Pension Fund;
- 6.4 in the event that the Service Provider or Service Provider Party is unable to become an Admitted Body pursuant to paragraph 6.2 then the Service Provider shall and shall ensure that the Service Provider Party shall continue to offer Eligible Employees membership of a Broadly Comparable Pension Scheme.

7. BROADLY COMPARABLE PENSION SCHEME

- 7.1 Where paragraph 6 applies the Service Provider shall or shall procure that any relevant Service Provider Party shall not later than the Admission Agreement Cessation Date nominate to the Authority in writing the occupational pension scheme

or schemes which it proposes shall be the Service Provider Pension Scheme for the purposes of paragraph 7. Such Service Provider Pension Scheme shall be a Broadly Comparable Pension Scheme.

7.2 The Service Provider undertakes to the Authority (for the benefit of the Authority itself and for the Authority as agent and trustee for the benefit of the Eligible Employees) that it shall and shall procure that any relevant Service Provider Party shall procure that:

7.2.1 the Eligible Employees shall by one (1) month before the Admission Agreement Cessation Date or within the three (3) months following the date the Administering Authority first gives notice to the Service Provider or Service Provider Party of its intention to terminate the Admission Agreement, whichever is the later, be offered membership of the Service Provider Pension Scheme with effect from and including the Admission Agreement Cessation Date;

7.2.2 the Service Provider Pension Scheme shall provide benefits in respect of the Eligible Employees' periods of service on and after the Admission Agreement Cessation Date which the Government Actuary's Department shall certify to be broadly comparable to the benefits which the Eligible Employees would have been entitled to under the Local Government Pension Scheme had they continued in membership of the Local Government Pension Scheme;

7.2.3 if the Service Provider Pension Scheme is terminated a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Service Provider or relevant Service Provider Party. The replacement scheme shall comply with this paragraph 7 as if it were the Service Provider Pension Scheme; and

7.2.4 before the Admission Agreement Cessation Date the trustees of the Service Provider Pension Scheme shall undertake by deed to the Authority and to the Administering Authority that they shall comply with paragraphs 7 and 8.

7.3 Regulations 81 and 82 of the Local Government Pension Scheme (Administration) Regulations shall apply in relation to the terms for bulk transfers from the Local

Government Pension Scheme to the Service Provider Scheme following the Service Commencement Date.

- 7.4 In the event of the termination or partial termination of this Agreement and in either case any Eligible Employee subsequently becoming a member of the Local Government Pension Scheme or a scheme offered by a Successor Service Provider, the Service Provider shall procure that a transfer payment will be offered from the Service Provider Pension Scheme to the relevant scheme within six (6) Months of the termination or partial termination of this Agreement in respect of each such Eligible Employee on terms which are:

7.4.1 consistent with the scheme specific funding basis for the purpose of Part 3 of the Pensions Act 2004;

and in any event:

7.4.2 on terms which are no less favourable than the terms of the transfer from the Local Government Pension Scheme to the Service Provider Pension Scheme under this paragraph 7.4, but on the basis that those terms shall apply to all of their benefits under the Service Provider Pension Scheme.

8. UNDERTAKING FROM THE SERVICE PROVIDER

The Service Provider undertakes to the Authority (for the benefit of the Authority itself and for the Authority as agent and trustee for the benefit of the Eligible Employees) to procure that:

- 8.1 all information which the Authority or the Administering Authority or their respective professional advisers may reasonably request from the Service Provider or any relevant Service Provider Party for the administration of the Local Government Pension Scheme or concerning any other matters raised in paragraphs 7 and 8 shall be supplied to them as expeditiously as possible;
- 8.2 it shall not and shall procure that any relevant Service Provider Party shall not, without the consent in writing of the Authority (which shall only be given subject to the payment by the Service Provider or the relevant Service Provider Party of such reasonable costs as the Authority or the Administering Authority may require) consent to, instigate, encourage or assist any event which could impose on the Local Government Pension Scheme or on the Authority a cost in respect of any Eligible

Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;

- 8.3 until the Service Commencement Date, it shall not and shall procure that any relevant Service Provider Party shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in paragraphs 1 to 6 (inclusive) without the consent in writing of the Authority and the Administering Authority (not to be unreasonably withheld or delayed), provided that this shall not apply to any announcement given to Eligible Employees who are not members of the Local Government Pension Scheme as at the Service Commencement Date in accordance with paragraph 1.3;
- 8.4 it shall not and shall procure that any relevant Service Provider Party shall not take or omit to take any action which would materially affect the benefits under the Local Government Pension Scheme or under the Service Provider Pension Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Authority not to be unreasonably withheld or delayed provided that the Service Provider and/or such Service Provider Party will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees; and
- 8.5 subject to the provisos to this paragraph 8.5, it shall, and shall procure that any relevant Service Provider Party shall, offer any Eligible Employee who ceases to be engaged in the provision of the Services (and thereby ceases to be eligible for membership of the Local Government Pension Scheme) membership of the Service Provider Pension Scheme as soon as reasonably practicable after ceasing to be so engaged, provided that:
- 8.5.1 the undertaking to offer membership of the Service Provider Pension Scheme shall not apply where the reason for the Eligible Employee ceasing to be engaged in the provision of the Services is that he has accepted another role within the Service Provider or relevant Service Provider Party organisation, and has given his written informed consent to pension provision other than membership of the Service Provider Pension Scheme. For the purpose of this paragraph 8.5, informed consent means that, before consent is given, the Service Provider or relevant Service Provider Party shall have:

8.5.1.1 given the Eligible Employee information in writing sufficient to explain the nature of the alternative pension provision and its effect on him;

8.5.1.2 notified the Eligible Employee in writing that he may make representations to the Service Provider or relevant Service Provider Party about the proposed alternative pension provision; and

8.5.1.3 afforded the Eligible Employee a reasonable opportunity to make such representations and to obtain advice in relation to the proposed alternative pension provision;

8.5.2 for the avoidance of doubt, paragraph 8.5 shall not apply where an employee ceases to be employed by the Service Provider or relevant Service Provider Party.

8.6 The Service Provider shall, and shall procure that any relevant Service Provider Party shall copy to the Authority's Pensions Manager all material correspondence and e-mails with the Administering Authority relating to the Eligible Employees within a reasonable time of the despatch or receipt of the same as appropriate.

9. CLAIMS FROM ELIGIBLE EMPLOYEES OR TRADE UNIONS

The Service Provider hereby indemnifies the Authority and/or any Successor Service Provider and, in each case, their sub-contractors from and against all Loss suffered or incurred by it or them which arises from claims by Eligible Employees of the Service Provider and/or of any Service Provider Party or by any trade unions, Employee Representatives or staff associations in respect of all or any such Eligible Employees which Loss:

9.1 relates to pension rights in respect of periods of employment on and after the Service Commencement Date until the date of termination or expiry of this Agreement; or

9.2 arises out of the failure of the Service Provider and/or any relevant Service Provider Party to comply with the provisions of schedule 25 (*Pensions*) before the date of termination or expiry of this Agreement.

10. LIABILITY FOR COSTS

The costs of the Authority necessarily and reasonably incurred in connection with obtaining the necessary certification of comparability in accordance with paragraph 7 shall be borne by the Service Provider.

11. TRANSFER TO ANOTHER EMPLOYER

Save on expiry or termination of this Agreement if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Service Provider shall and shall procure that any relevant Service Provider Party shall:

- 11.1 consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and
- 11.2 procure that the employer to which the Eligible Employees are transferred (the "**New Employer**") complies with the provisions of schedule 25 (*Pensions*) provided that references to the "Service Provider Party" will become references to the New Employer, references to the "Service Commencement Date" will become references to the date of the transfer to the New Employer, references to the "Admission Agreement Cessation Date" will become references to the date on which the New Employer ceases to participate in the Local Government Pension Scheme and references to "Eligible Employees" in schedule 25 (*Pensions*) will become references to the Eligible Employees so transferred to the New Employer.

12. PENSION ISSUES ON EXPIRY OR TERMINATION

The Service Provider shall (and shall procure that each relevant Service Provider Party shall):

- 12.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Service Provider or any Service Provider Party in the provision of the Services on the expiry or termination of this Agreement (including the Eligible Employees);
- 12.2 promptly provide to the Authority such documents and information mentioned in paragraph 12.1 which the Authority may reasonably request in advance of the expiry or termination of this Agreement; and

- 12.3 co-operate fully (and procure that the trustees of the Service Provider Pension Scheme shall co-operate fully) with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Service Provider or any Service Provider Party in the provision of the Services on the expiry or termination of this Agreement.