1. Transfer of employees
2. Definitions

The definitions in this paragraph apply in this schedule:

Admission Agreement**:** the agreement in the form set out in Part 3 of this Schedule 10 to be entered into in accordance with regulation 3 of the Local Government Pension Scheme Regulations 2013, by the administering Council, the Council and the Provider or Sub-Contractor, as appropriate.

Appropriate Pension Provision**:** in respect of:

* + 1. Eligible Employees, either:
			1. membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer; or
			2. pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members.

Bond**:** the bond to be executed in the in the form set out in Part 3 of this Schedule 10 under paragraph 5.3 (Not required).

**Cessation Date:** the date on which the Provider or the relevant Sub-Contractor ceases to be admitted to the LGPS other than as a result of the termination or expiry of this agreement or because it ceases to employ any Eligible Employees.

**Compensation Regulations:** the Local Government (Discretionary Payments) Regulations 1996 and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006.

**Directive:** the EC Council Directive 2001/23 as amended.

**Effective Date**: the date(s) on which the Services (or any part of the Services) transfer from the Council or any Third Party Employer to the Provider or Sub-Contractor, and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Provider or Sub-Contractor.

Eligible Employees**:** the Third Party Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date.

Employee Liability Information**:** the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

* + 1. the identity and age of the employee; and
		2. the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
		3. information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and
		4. information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Provider arising out of the employee's employment with the transferor; and
		5. information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

Employer Contribution Rate: the maximum rate of employer contributions to be paid by the Provider or any Sub-Contractor for the benefit of the LGPS as set out in Schedule 2 of the Admission Agreement.

Employment Liabilities**:** all claims, including claims, without limitation, for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

LGPS**:** Local Government Pension Scheme.

LGPS Regulations**:** the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended and replaced from time to time).

Relevant Employees**:** those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Provider by virtue of the application of TUPE.

Replacement Provider: any third party supplier of services which are identical or substantially similar to the Services appointed by the Council following the termination or expiry of this agreement.

Provider's Final Staff List**:** the list of all the Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Provider's Provisional Staff List**:** the list prepared and updated by the Provider of all the Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Service Transfer Date**:** the date on which the Services (or any part of the Services), transfer from the Provider or Sub-contractor to the Council or any Replacement Provider.

Staffing Information**:** in relation to all persons detailed on the Provider's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

Third Party Agreement: an agreement between the Council and a Third Party Employer

Third Party Employee**:** employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to the Provider or Sub-contractor by virtue of the application of TUPE as listed in Part 2 of this Schedule 10.

Third Party Employer**:** a Provider engaged by the Council to provide all or some of the Services to the Council and whose employees will transfer to the Provider on the Effective Date.

Transferring Original Employee: a Third Party Employee who was an employee of the Council who became by application of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or TUPE on one or more occasions an employee of someone other than the Council who was engaged by the Council to provide the Services.

1. Transfer of employees to the Provider
	1. The Council and the Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment (and any collective agreement) of any Third Party Employees shall transfer to the Provider or Sub-Contractor. On the occasion of each Relevant Transfer the Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE and the Directive. The first Relevant Transfer shall occur on the Effective Date. The Council shall use its reasonable endeavours to procure that any Third Party Employer shall comply with their obligations under TUPE.
	2. Not used.
	3. Not used.
	4. The Provider shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against Employment Liabilities arising from or as a consequence of:
		1. any proposed changes to terms and conditions of employment the Provider or Sub-Contractor may consider taking on or after the Effective Date;
		2. any of the employees informing the Council and any Third Party Employer they object to being employed by the Provider or Sub-Contractor; and
		3. any change in identity of the Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Provider or Sub-Contractor may consider taking on or after the Effective Date.
	5. The Provider shall be liable for and indemnify and keep indemnified the Council and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Third Party Employees, and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.
	6. The Provider shall immediately on request by the Council and/or the Third Party Employer provide details of any measures that the Provider or any Sub-Contractor of the Provider envisages it will take in relation to any Third Party Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Provider shall give confirmation of that fact, and shall indemnify the Council and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.
	7. The Provider shall, and shall procure that any Sub-Contractor shall, in accordance with TUPE recognise the trade unions representing the Relevant Employees after the transfer to the same extent as they were recognised by the Council, or Third Party Employer before the Effective Date.
2. Employment exit provisions
	1. This agreement envisages that subsequent to the Commencement Date, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Council or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
	2. The Provider shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this agreement or otherwise, on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services, the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Provider shall notify the Council of any material changes to this information as and when they occur.
	3. At least 28 days prior to the Service Transfer Date, the Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Provider:
		1. the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's and Sub-Contractor's personnel named are Relevant Employees,
		2. Pay slip data for the most recent month,
		3. cumulative pay for tax and pension purposes,
		4. cumulative tax paid,
		5. tax code,
		6. voluntary deductions from pay,
		7. bank or building society account details for payroll purposes.
	4. The Council shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services that are substantially the same type of services as (or any part of) the Services.
	5. The Provider warrants to the Council and the Replacement Provider that the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Provider's Final Staff List.
	6. The Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
	7. Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this agreement shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Provider shall and shall procure that any Sub-Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them. This will include any changes to the make up and number of employees on the Provider’s Provisional Staff List. In relation to employees already listed on the Provider’s Provisional Staff List changes to be notified will include:
		1. Any changes to make up and number of employees,
		2. Changes to terms and conditions of employment ,
		3. Increasing the proportion of working time spent on the Services,
		4. Introduction of any new contractual or customary practice concerning the making of a lump sum payment on termination of employment,
		5. Termination of employment.
	8. The Provider shall indemnify and keep indemnified in full the Council and at the Council's request each and every Replacement Provider against all Employment Liabilities relating to:
		1. any person who is or has been employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any of the Services; or
		2. any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Provider and/or any Sub-Contractor),

arising from or connected with any failure by the Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

* 1. The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
	2. If any person claims or it is determined that his contract of employment has been transferred from the Provider or any Sub-Contractor to the Council or the Replacement Provider pursuant to a Relevant Transfer, or claims that his employment would have so transferred had he not resigned, the Council or the Replacement Provider will, within seven (7) days of becoming aware of that fact, give notice in writing to the Provider. The Provider may offer (or may procure that a Sub-Contractor may offer) employment to such person within twenty-one (21) days of the notification by the Council or the Replacement Contractor. If such offer is accepted, the Council or the Replacement Contractor shall immediately release the person from his employment. If after that period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Employer or the Replacement Provider may, within seven (7) days, give notice to terminate the employment of such person. Subject to the Council or the Replacement Provider acting in this way or in such other way as may be agreed between the Provider and the Council or the Replacement Provider, the Provider will indemnify the Council against all Employment Liabilities arising out of such termination. If such person is neither reemployed by the Provider or any Sub-Contractor within the time scales set out in this clause such person will be treated as a Relevant Employee.
	3. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.8, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
	4. Despite paragraph 3.10, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.
	5. In the event of a Subsequent Transfer to which TUPE does not apply, the following provisions shall apply:
		1. The Council or the Replacement Provider can, at its discretion, make an offer, in writing of employment under a new contract of employment to take effect at the earliest reasonable opportunity to any of the employees listed on the Provider’s Provisional Staff List or to any Provider’s or Sub-Contractor’s Personnel assigned to the Services,
		2. When the offer has been made by the Council or the Replacement Provider and accepted by any employee or worker, the Provider shall and shall procure that any Sub-Contractor shall permit the employee or worker to leave his employment, as soon as practicable depending on the business needs of the Provider which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow.
		3. If the employee does not accept an offer of employment made by the Council or the Replacement Provider, the employee shall remain employed by the Provider (or Sub-Contractor as the case may be) and liability for all Employment Liabilities in relation to that employee shall remain with the Provider or the relevant Sub-Contractor,
		4. If the Council or the Replacement Provider does not make an offer to an employee on the Provider’s Provisional Staff List or any Provider’s Personnel, then those employees and all Employment Liabilities in relation to those employees remain with the Provider.
	6. The Council regards compliance with this [clause](#a183032) as fundamental to the agreement. In particular, failure to comply with [clause](#a101627) 3.2 and [clause](#a436793) 3.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Council to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this [clause](#a851692) 3.14 shall not exceed an amount equivalent to the Charges that would be payable in the [three] month period following the Service Provider's failure to comply with [clause](#a101627) 3.2 or [clause](#a436793) 3.3, as the case may be.
1. Pensions
	1. The Provider shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date up to and including the date of the termination or expiry of this agreement and shall comply with its obligations under the Pensions Act 2004 and the Pensions Act 2008 as amended, and any regulations made thereunder.
	2. The provisions of paragraph 4 and paragraph 5 of this Schedule 10 shall be directly enforceable by an affected employee against the Provider or any relevant Sub-Contractor and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Provider or Sub-Contractor under those paragraphs in his own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.
2. Admitted body status to the Local Government Pension Scheme
	1. Where the Provider or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Provider shall or shall procure that it and/or each relevant Sub-Contractor shall enter into an Admission Agreement to have effect from and including the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. The Provider or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate [and Bond value] in respect of any Eligible Employee who elects to join the LGPS [on or after] the Effective Date and any other costs of the Council necessarily and reasonably incurred in connection with the Admission Agreement.
	2. The Provider shall indemnify and keep indemnified the Council and/or any Replacement Provider and, in each case, their Providers, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Provider or Sub-Contractor 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.
	3. **Not used** .
	4. The Provider shall not, and shall procure that any Sub-Contractor shall not, issue any announcements (whether in writing or not) to the Eligible Employees concerning matters stated in paragraph 5 of this Schedule without the consent in writing of the Council (such consent not to be unreasonably withheld or delayed) until the Effective Date or other Transfer Date.
3. Funding – Admission Agreement
	1. The Council shall procure that for the purposes of the Admission Agreement, the Eligible Employees’ benefits accrued under the LGPS prior to the Effective Date or other Transfer Date are fully funded as at that date, as determined by the actuary to the Council’s section of the LGPS on a basis which is consistent with the LGPS’s ongoing basis.
	2. Notwithstanding and without prejudice to the Provider or any Sub-Contractor’s obligation to make payments under the LGPS Regulations, the responsibilities for funding employer contributions in respect of Eligible Employees from the Effective Date or other Transfer Date are as follows:
		1. Where the employer contribution rate equals the Employer Contribution Rate, the Provider or any Sub-Contractor shall be solely responsible for the cost of those contributions;
		2. The Council will be responsible for the cost of any employer contributions paid by the Provider or any Sub-Contractor which exceed the Employer Contribution Rate and shall, upon receipt of evidence of such payments by the Provider or any Sub-Contractor, include a sum equal to that amount within any charges due to the Provider under Clause 11 of this Agreement.
		3. Where the employer contribution rate is below the Employer Contribution Rate, the Provider shall without delay credit to the Council the difference between the Employer Contribution Rate and the cost of the employer contributions actually paid by the Provider or any Sub-Contractor within any charges due to the Provider under Clause 11 of this Agreement.
	3. For the avoidance of doubt, additional costs attributable to the Provider under the Admission Agreement, including in particular those costs identified in Clause 5.6 of the Admission Agreement, shall be met in full by the Provider and do not form part of the ongoing employer contribution rate payable in accordance with the LGPS Regulations and are not subject to paragraph 6.2 of this Schedule.
	4. Save where the Admission Agreement is terminated in consequence of a breach by the Provider or Sub-Contractor of the terms of the Admission Agreement and subject to payment of contributions by the Provider or Sub-Contractor in accordance with paragraph 6.2 and any assessed additional costs under paragraph 6.3, the Council shall be responsible for any deficiency in the LGPS funding in respect of the Eligible Employees calculated on the termination of the Admission Agreement in accordance with the LGPS Regulations. The Council acknowledges that the amount paid by the Provider pursuant to paragraph 6.2 will represent the Provider’s or Sub-Contractor’s entire and maximum liability in respect of employer contributions under this Schedule and under the Admission Agreement
	5. In the event of any inconsistency between the terms of this Agreement (including this Schedule) and the terms of the Admission Agreement, as between the Council and the Provider only, the terms of this Agreement shall prevail.
4. Provider pension scheme
	1. Where the Provider or Sub-Contractor does not wish to or is otherwise prevented from offering the Eligible Employees membership or continued membership of the LGPS, the Provider shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of an occupational pension scheme (“the Provider’s Pension Scheme”) with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer or from the Cessation Date (as the case may be). Such an occupational pension scheme must be:
		1. established no later than three months prior to the date of the Relevant Transfer or the Cessation Date and maintained until any payment to be made under Part 4 to this Schedule (Bulk Transfer Terms) is made ; and
		2. certified by the GAD as providing benefits that are the same as, broadly comparable to or better than those provided by the LGPS or any other pension scheme of which an Eligible Employee is a member immediately before the date of the Relevant Transfer or Cessation Date
	2. The Provider shall produce evidence of compliance with this paragraph 7 to the Council prior to the date of the Relevant Transfer or the Cessation Date.
	3. Where there are Transferring Original Employees who are not Eligible Employees but who are active members of or have the right to acquire benefits under an occupational pension scheme provided by a Third Party Employer on the Effective Date or other relevant Transfer Date, the Provider shall and shall procure that any relevant Sub-Contractor shall offer those employees membership of the Provider’s Pension Scheme.
	4. If the Provider’s Pension Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Provider or relevant Sub-Contractor. The replacement scheme must comply with this Paragraph 7 as if it were the Provider’s Pension Scheme.
	5. The costs of the Council necessarily and reasonably incurred in connection with obtaining the necessary certification of comparability from the GAD shall be borne by the Provider.
	6. The Provider shall not, and shall procure that any relevant Sub-Contractor shall not, take or omit to take any action which would materially affect the benefits under the Provider’s Pension Scheme of any Eligible Employees without the prior written agreement of the Council (such consent not to be unreasonably withheld or delayed) except in relation to pre-existing contractual obligations.
	7. Where the award of benefits to the Eligible Employees is not permitted under the Compensation Regulations and/or the LGPS or a Provider’s Pension Scheme is in place, the Provider shall, and shall procure that any Sub-Contractor shall award benefits to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.
	8. Where the benefits to be awarded under paragraph 7.6 are of a discretionary nature, they shall be awarded on the basis of the Council’s written policy in relation to such benefits at the time of the Effective Date or date of another Relevant Transfer (which the Council shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Provider shall and shall procure that any relevant Sub-Contractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.
5. claims from eligible employees or trade unions
	1. The Provider hereby indemnifies the Council and/or any Replacement Provider and, in each case, their Sub-Contractors from and against all Employment Liabilities suffered or incurred by it or them which arise from claims by Eligible Employees of the Council and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:
		1. Relate to pension rights in respect of periods of employment on or after the Effective Date or other relevant Transfer Date until the date of termination or expiry of this Agreement; or
		2. Arise out of the failure of the Provider and/or any relevant Sub-Contractor to comply with the provisions of this Schedule before the date of termination or expiry of this Agreement,

Save to the extent that such losses have been caused by any act and/or omission of the Council.

1. transfer to another employer
	1. 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 Provider shall and shall procure that any relevant Sub-Contractor shall:
		1. Consult with and inform those Eligible Employees of the pension provisions relating to that transfer;
		2. Procure that the employer to which the Eligible Employees are transferred (“the New Employer”) complies with the provisions of this Schedule provided that references to the “Provider” will become references to the New Employer, the relevant Transfer Date will be the date of the transfer to the New Employer and references to “Eligible Employees” will become references to the Eligible Employees so transferred to the New Employer.
2. pension issues on expiry or termination
	1. The Contractor shall and shall procure that any relevant Sub-Contractor shall:
		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 Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees),
		2. Promptly provide to the Council such documents and information mentioned in clause 10.1(b) which the Council may reasonably request in advance of the expiry or termination of this Agreement, and
		3. Fully co-operate (and shall use best endeavours to procure that the trustees of any Provider’s Pension Scheme shall fully co-operate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement.
3. Third party employees

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| --- |
| **Third Party Employees** |
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|  |
|  |

1. Admission agreement and Bond
2. Bulk Transfer Terms

The Council’s actuary shall determine the terms for bulk transfers from the LGPS to the Provider’s Pension scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this agreement.

OR

These terms shall apply in relation to the terms for bulk transfers from the LGPS to the Provider’s Pension Scheme following the date of a Relevant Transfer or the Cessation Date and any subsequent bulk transfers on termination or expiry of this Contract.

1. **Interpretation and definitions**

In this Schedule (Part 4), unless the context otherwise requires, the following terms shall have the meanings given to them below:

**Actuary’s Letter**

means the letter from the Administering Authority’s Actuary, a copy of which has been attached to this Schedule (Part 4) ,

**Administering Authority’s Actuary**

means name of actuary of name of firm, or another actuary appointed by the Administering Authority for the purposes of this Schedule (Part 4),

**AVCs**

means AVCs or SCAVCs as defined in the LGPS Regulations,

**Due Date**

means the date days after the last of the conditions in paragraph 3.6 of this Schedule (Part 4) has been satisfied,

**Fund**

means the Fund within the LGPS,

**Provider’s Actuary**

means name of actuary of name of firm, or another actuary appointed by the Provider and/or relevant Sub-Contractor for the purposes of this Schedule (Part 4),

**Transfer Amount**

means the amount or amounts referred to in paragraph 3.1 of this Schedule (Part 4),

**Transferring Member**

means an Eligible Employee who agrees to a transfer of benefits being made for him or her from the Fund to the Provider Pension Scheme under paragraph 2 of this Schedule (Part 4),

1. **The Provider pension Scheme**

The Provider shall (and shall procure that each relevant Sub-Contractor shall) invite each Eligible Employee who joins the Provider Pension Scheme in accordance with paragraph 7 of Schedule 10 to this Agreement to consent to a transfer of benefits being made for him from the Fund to the Provider Pension Scheme. The Provider and/or relevant Sub-Contractor must issue this invitation no later than one (1) month after the Effective Date, date of the Relevant Transfer or Cessation Date (whichever is applicable). The invitation must be in a form acceptable to the Council and the Administering Authority (such acceptance not to be unreasonably withheld or delayed by the Council) and which complies with any requirements of the LGPS Regulations. Any Eligible Employee wishing to consent to a transfer of benefits must notify the Provider and/or relevant Sub-Contractor of this consent in writing no later than three months after the date of the invitation. The Provider shall (and shall procure that each relevant Sub-Contractor shall) provide the Council and the Administering Authority with the names of the Transferring Members no later than four (4) months after the Effective Date, date of the Relevant Transfer or Cessation Date.

1. **Transfer payment from the fund**
	1. The Council shall use reasonable endeavours to ensure that the Administering Authority transfers from the Fund to the Provider Pension Scheme on the Due Date an amount in respect of the relevant Transferring Members' service in the Fund before the Effective Date, date of the Relevant Transfer or Cessation Date calculated in accordance with the Actuary’s Letter and the LGPS Regulations.
	2. As soon as reasonably practicable following the Effective Date, date of the Relevant Transfer or Cessation Date, the Provider shall (and shall procure that each relevant Sub-Contractor shall) promptly provide all data within its possession or under its control which the Administering Authority and the Administering Authority’s Actuary may require for the calculation of the Transfer Amount and shall warrant that this data is in all material respects true, complete and accurate.
	3. As soon as reasonably practicable following the Effective Date, date of the Relevant Transfer or Cessation Date, the Council shall promptly provide all data within its possession or under its control which the Administering Authority and the Administering Authority’s Actuary may require for the calculation of the Transfer Amount and shall warrant that this data is in all material respects true, complete and accurate.
	4. The Council shall use its reasonable endeavours to procure that:
		1. as soon as reasonably practicable after the Administering Authority's Actuary has been provided with the necessary data and information, the Administering Authority's Actuary shall calculate the Transfer Amount in accordance with the Actuary’s Letter and the LGPS Regulations, and
		2. within one (1) week of completing this calculation, the Administering Authority’s Actuary shall notify the Provider’s Actuary in writing of the particulars of the calculation and the data on which the calculation is based.

The Provider’s Actuary will then have one (1) month (or such longer period as the parties may agree) from the date on which those particulars and data have been supplied to him in which to object in writing that the calculation is incorrect or not in accordance with the Actuary’s Letter. The calculation shall be final and binding on the parties if the Provider’s Actuary raises no objection within this stated period.

* 1. If the Provider’s Actuary objects in writing under paragraph 3.4 of this Schedule (Part 4) and the Administering Authority’s Actuary and the Provider’s Actuary cannot subsequently agree the Transfer Amount within one (1) month (or such longer period as shall be agreed between the parties) of the objection, then the amount shall be determined by an independent actuary to be nominated by the Administering Authority and the Provider and/or relevant Sub-Contractor jointly or, if they cannot agree, by the President of the Institute of Actuaries on application by either party. The independent actuary shall act as an expert and not as an arbitrator, and his decision shall be final and binding on the parties. The independent actuary’s costs shall be payable equally by the Administering Authority and the Provider and/or relevant Sub-Contractor.
	2. Payment to the Provider Pension Scheme of the Transfer Amount shall only be made on the following conditions:
		1. the Transfer Amount has been agreed or determined under paragraph 3.4 or 3.5 of this Schedule (Part 4) and in accordance with the LGPS Regulations,
		2. the Provider and/or relevant Sub-Contractor has complied with all its obligations under this Schedule (Part 4), and
		3. the trustees of the Provider Pension Scheme have confirmed in writing that:
			1. a payment should be made in accordance with the LGPS Regulations and that they shall accept payment on the terms set out in paragraph 4 of this Schedule (Part 4),
			2. they shall accept liability for each Transferring Member’s accrued contracted out rights under the Fund, and
			3. they shall accept the Transfer Amount in full and final settlement of all claims against the Fund in respect of each Transferring Member.
	3. The payment of the Transfer Amount shall be satisfied by the transfer of readily marketable stocks and shares of the Fund as agreed by the Administering Authority and the trustees of the Provider Pension Scheme having a mid-market value on the day before the Due Date equal to the Transfer Amount. If the Administering Authority and the trustees of the Provider Pension Scheme are not able to agree some or all of the particular assets to be transferred, or the mid-market value of any such assets, the payment of the Transfer Amount (or the appropriate part of it) shall be satisfied by the Fund transferring cash equal to \*% of that part of the Transfer Amount in respect of which there has been no agreement as to the assets to be transferred.
1. **Past service benefits**

The Provider shall (and shall procure that each relevant Sub-Contractor shall) ensure that:

* 1. the Provider Pension Scheme provides in respect of each Transferring Member such benefits as the Administering Authority’s Actuary certifies to be of actuarially equivalent value (in accordance with the Actuary's Letter) to the benefits which would have been payable under the LGPS in respect of the Transferring Member’s service before the Effective Date, the date of the Relevant Transfer or the Cessation Date if he had remained a member of the LGPS, and
	2. the Transfer Amount will, subject only to any HMRC limits that may still apply, be wholly applied in the Provider Pension Scheme for the provision of the benefits mentioned in paragraph 4.1 of this Schedule (Part 4).
1. **Additional voluntary contributions (AVCs)**

Nothing in this Schedule (Part 4) shall apply to AVCs or to benefits secured by them. However, the Council shall use reasonable endeavours to ensure that the assets representing each Transferring Member's AVCs in the Fund (if any) shall be transferred to the Provider Pension Scheme. The Provider shall (and shall procure that each relevant Sub-Contractor shall) ensure that the Provider Pension Scheme provides benefits for each relevant Transferring Member which are equivalent to the assets transferred.

1. **No assistance**

The Provider shall not (and shall procure that each relevant Sub-Contractor shall not) encourage or initiate or assist or facilitate any action or provide any financial assistance for the purpose of requiring the Fund to pay an amount larger than the Transfer Amount to the Provider Pension Scheme in respect of the Transferring Members.

1. **Exit provisions**
	1. The Provider undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees that on:
		1. the expiry or termination of this Agreement, or
		2. the expiry or termination of any Sub-Contract in the case of a relevant Sub-Contractor, or
		3. the employment of any Eligible Employee transferring to a Replacement Employer in accordance with clause 3 of Schedule 10 to this Agreement (or otherwise),

the Provider shall (and shall procure that each relevant Sub-Contractor shall) procure that the trustees of the Provider Pension Scheme offer bulk transfer terms in respect of the relevant Eligible Employees' service in the Provider Pension Scheme to the pension scheme of the Council, any Replacement Provider (or their sub-contractors) or any new Sub-Contractor (as applicable) which are no less favourable (in the opinion of the Administering Authority's Actuary or an actuary appointed by the Council) than the bulk transfer terms set out in the Actuary's Letter.

* 1. If the transfer payment paid by the trustees of the Provider Pension Scheme is less (in the opinion of the Administering Authority's Actuary or an actuary appointed by the Council) than the transfer payment which would have been paid had paragraph 7.1 of this Schedule (Part 4) been complied with, the Provider shall (and/or shall procure that each relevant Sub-Contractor shall) pay to the Council, any Replacement Provider (or their sub-contractor), or any new Sub-Contractor (as appropriate) (or as such person shall direct) the amount of the difference.
1. **Council’s costs**

Any costs of the Council necessarily and reasonably incurred in connection with this Schedule (Part 4) shall be borne by the Provider.