

**OFFICIAL SENSITIVE**

**CPA 10, DERBYSHIRE, LEICESTERSHIRE, NOTTINGHAMSHIRE AND RUTLAND, BIDDER 837**

DATED

2014

**TAMESIDE METROPOLITAN BOROUGH COUNCIL**

and

**[COMMUNITY REHABILITATION COMPANY]**

and

**THE SECRETARY OF STATE FOR JUSTICE**

**ADMISSION AGREEMENT**

relating to an Admission Body

Sandra Stewart  
Borough Solicitor  
Tameside MBC  
Council Offices  
Wellington Road  
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GMPFL/CO:20209177.19

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**THIS DEED** is dated

## **PARTIES**

- (1) **TAMESIDE METROPOLITAN BOROUGH COUNCIL** of Council Offices, Wellington Road, Ashton-under-Lyne, OL6 6DL (**'Administering Authority'**);
- (2) **[COMMUNITY REHABILITATION COMPANY]** (Company Registration Number [●]) whose registered office is situated at 102 Petty France, London, SW1H 9EX (**'Admission Body'**); and
- (3) **THE SECRETARY OF STATE FOR JUSTICE** of 102 Petty France, London, SW1H 9EX (**'Secretary of State for Justice'**)

## **BACKGROUND**

- (A) The Administering Authority is an administering authority as defined under Schedule 1 of the Regulations. It administers and maintains the Fund.
- (B) Under the Offender Management Act 2007, it is a function of the Secretary of State for Justice to ensure sufficient provision is made throughout England and Wales for probation purposes.
- (C) On 19 September 2013, the Secretary of State for Justice issued an invitation to negotiate for the contract to manage offender services in the community, with the services allocated nationally to contractors across a number of geographical lots.
- (D) With effect from and including 1 June 2014, the Admission Body will provide offender services in the *[name of contract package area]* pursuant to the Services Agreement pending the acquisition of the shares in the Admission Body by the Contractor whose bid to provide the services in *[name of contract package area]* was successful.
- (E) The Admission Body is an admission body as defined in Schedule 1 of the Regulations, being a body which provides a public service in the United Kingdom and is approved in writing by the Secretary of State for Communities and Local Government for the purpose of admission to the Scheme pursuant to paragraph 1(e) of Part 3 of Schedule 2 of the Regulations.
- (F) The parties have agreed to enter into this agreement to allow the Admission Body to be admitted to the Scheme and to participate in the Fund so that the Eligible Employees can become or remain members of the Scheme whilst employed by the Admission Body in connection with the provision of the Services with effect on and after the Effective Date.
- (G) The terms and conditions of admission have been agreed between the parties to this agreement as follows.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement:

**'Administering Authority'** has the meaning given in Schedule 1 to the Regulations.

**'Actuary'** means an actuary appointed by the Administering Authority.

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**‘Administration Regulations’** means the Local Government Pension Scheme (Administration) Regulations 2008.

**‘Agreed Rate of Increase’** means the rate of annual increase in pensionable pay assumed by the Actuary in the latest formal actuarial valuation for the Fund, including an allowance for promotional increases.

**‘Amendment Date’** means the date upon which the Admission Body transfers from the ownership of the Secretary of State for Justice into the ownership of the Contractor.

**‘Compulsorily Transferred Employee’** means a person whose employment transfers to the Admission Body pursuant to TUPE or a Staff Transfer Scheme after the Amendment Date on terms that they should be permitted to be or remain an active member of the Scheme on the terms of this Admission Agreement (to be confirmed in writing by the Secretary of State for Justice) provided that:

- (a) the person is and remains employed by the Admission Body in connection with the provision of the Services; and
- (b) the person satisfies the requirements of the Regulations relating to eligibility for and membership of the Scheme.

**‘Contractor’** means the entity which will acquire the shares of the Admission Body on the Amendment Date.

**‘Effective Date’** means 1 June 2014.

**‘Eligible Employee’** means a Transferred Active Eligible Employee or a Transferred Non-Active Eligible Employee or a Compulsorily Transferred Employee.

**‘Exit Contribution’** means either:

- (a) the revised contributions required by the Administering Authority from the Admission Body set out in a rates and adjustment certificate arising as a result of a valuation carried out under regulation 64(2) of the Regulations upon the termination of the Services Agreement or, if earlier, on the termination of this agreement; or
- (b) the revised contributions required by the Administering Authority from the Admission Body set out in the actuary’s certificate prepared in the circumstances set out in regulation 64(4) of the Regulations; or
- (c) the revised contributions required by the Administering Authority from the Admission Body set out in a rates and adjustment certificate arising as a result of a valuation carried out under regulations 64(2) or 64(4) of the Regulations, or otherwise, in circumstances where the Admission Body is treated as an exiting employer in relation to certain Eligible Employees who are transferring to a Future Service Provider, but will continue to participate in the Fund under this agreement.

**‘Fund’** means the Greater Manchester Pension Fund within the Scheme.

**‘Future Service Provider’** means any alternative service provider or sub-contractor appointed by the Secretary of State for Justice or the Admission Body to perform the Services or any part of the Services.

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**‘Grace Period Employee’** means a person whose employment with the Admission Body commences within the 12 month period immediately following the Amendment Date, and who was (a) employed by another admission body or a Scheme employer engaged in the provision of probation services as at the Amendment Date and (b) an active member of the Scheme (or eligible to join the Scheme) in that employment; and whose name is notified in writing by the Admission Body to the Administering Authority and the Secretary of State for Justice.

**‘Member’** means an Eligible Employee who joins the Scheme as an active member and who remains an active member or subsequently becomes a deferred member, a deferred pensioner member or a pensioner member. Where applicable, this term shall also include a Member's surviving spouse, civil partner, cohabiting partner, eligible child or dependant, whether actual or prospective, or a pension credit member whose entitlement arises as a consequence of a pension debit in relation to a Member.

**‘Pension Administration Strategy’** means the pension administration strategy published from time to time by the Administering Authority and available on the website of the Fund.

**‘Pensions Related Discretionary Action’** means any or all of the following acts or omissions of the Admission Body occurring after the Amendment Date other than as a result of any reorganisation or redundancy process commenced or agreed on or before the Amendment Date:

- (a) the consent to or grant of early retirement benefits on grounds of redundancy or for reasons of business efficiency to or in respect of an Eligible Employee;
- (b) the consent to or grant of any unreduced early retirement benefits to or in respect of an Eligible Employee or former Eligible Employee, whether or not for reasons of ill-health;
- (c) the consent to or grant of any other type of enhanced benefit under the Regulations to or in respect of an Eligible Employee or former Eligible Employee at the discretion of the Admission Body, including, but not limited to, an award of additional pension and enhanced benefits in the context of flexible retirement;
- (d) the grant of increases in pensionable pay (as defined in the Regulations) to Eligible Employees in excess of the Agreed Rate of Increase calculated as the average increase over all Eligible Employees;
- (e) the employment of an Eligible LGPS Employee in relation to whom there is an inward transfer of pension rights under regulation 100 of the LGPS 2013 Regulations (other than in relation to a transfer of liabilities pursuant to the Local Government Pension Scheme (Offender Management) Regulations 2014 or in relation to any compulsory transfers of employments to the Admission Body under TUPE or a Staff Transfer Scheme in the context of which it has been agreed by the Secretary of State for Justice that such liabilities are to be treated as fully funded on the Scheme's ongoing basis for the purpose of the Admission Body's liability to fund those liabilities) or who exercises the option to aggregate a past period of membership with the current period of membership as an employee of the Admission Body giving rise to a net additional liability for the Administering Authority; and/or
- (f) any act or omission which gives rise to any costs other than minimum employer contributions payable under any rates or adjustment certificate issued by the Actuary in relation to the Admission Body from time to time, including but not limited to costs arising from any breach of this agreement by the Admission Body.

**‘Probation Trust’** means a trust established under section 5 of the Offender Management Act 2007.

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**‘Registered Pension Scheme’** means a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

**‘Regulations’** means the Local Government Pension Scheme Regulations 2013 (as may be amended from time to time).

**‘Scheme employer’** has the meaning given in Schedule 1 to the Regulations.

**‘Scheme’** means the Local Government Pension Scheme.

**‘Services’** means the services which are to be provided by the Admission Body under the Services Agreement.

**‘Services Agreement’** means the contract dated 1 June 2014 between the Secretary of State for Justice and the Admission Body and any amended and restated Services Agreement between the Secretary of State for Justice and the Admission Body.

**‘SSJ Pensions Guarantee’** means the guarantee entered into by the Secretary of State for Justice, the Administering Authority and the Admission Body in relation to certain of the Admission Body’s obligations under the Scheme in materially the same form attached as Appendix 1.

**‘Staff Transfer Scheme’** means a staff transfer made pursuant to Schedule 2, paragraph 5 of the Offender Management Act 2007.

**‘Transferred Active Eligible Employee’** means:

- (i) an employee of the Admission Body listed in Schedule 1 whose employment transfers to the Admission Body with effect on and from the Effective Date and who is employed in connection with the provision of the Services;
- (ii) a Grace Period Employee; and
- (iii) any new employee of the Admission Body whose employment commences after the Effective Date but prior to the Amendment Date;

provided that in relation to (i), (ii) and (iii) above:

- (a) the employee was immediately before the Effective Date (or immediately before joining the Admission Body, if later) an active member of the Scheme and remains employed by the Admission Body in connection with the provision of the Services; and
- (b) the employee satisfies the requirements of the Regulations relating to eligibility for and membership of the Scheme.

**‘Transferred Non-Active Eligible Employee’** means:

- (i) an employee of the Admission Body listed in Schedule 2 whose employment transfers to the Admission Body with effect on and from the Effective Date and who is employed in connection with the provision of Services;
- (ii) a Grace Period Employee; and
- (iii) any new employee of the Admission Body whose employment commences after the Effective Date but prior to the Amendment Date;

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provided that:

(a) in relation to (i) and (ii) above, the employee was not immediately before the Effective Date an active member of the Scheme but was eligible to join the Scheme, and remains employed by the Admission Body in connection with the provision of the Services; and

(b) in relation to (i), (ii) and (iii) above the employee satisfies the requirements of the Regulations relating to eligibility for and membership of the Scheme.

**‘TUPE’** means the Transfer of Undertaking (Protection of Employment) Regulations 2006, as amended or modified from time to time.

- 1.2 Unless stated otherwise, the words and expressions used in this agreement shall have the same meanings as in the Regulations, unless the context otherwise requires.
- 1.3 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.4 A **‘person’** includes a natural person and a corporate or unincorporated body, whether or not having separate legal personality.
- 1.5 A reference to a **‘company’** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other gender.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.10 A reference to **‘writing’** or **‘written’** includes faxes but not e-mail.
- 1.11 Any obligation in this agreement on a person not to do something includes an obligation not to allow that thing to be done.
- 1.12 Unless the Administering Authority and Secretary of State for Justice agree otherwise, the expression “employed by the Admission Body in connection with the Services” shall mean that an Eligible Employee is wholly or mainly engaged working on the Services.
- 1.13 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the schedules.

**2. EFFECTIVE DATE**

This agreement shall have effect on and from the Effective Date.

**3. ADMISSION**

- 3.1 From and including the Effective Date, the Administering Authority shall permit each Eligible Employee to be or to remain a member of the Scheme and to participate as an active member of the Fund. From that date the Admission Body shall operate as a Scheme employer for the purpose of the

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Regulations and shall assume all the responsibilities of a Scheme employer provided for in the Regulations.

- 3.2 The Admission Body confirms that it has designated the Eligible Employees as eligible for membership of the Scheme pursuant to Regulation 3(1)(c) of the Regulations.
- 3.3 This is to be an open admission agreement but no employees of the Admission Body whose employment commences after the Amendment Date other than Grace Period Employees and the Compulsorily Transferred Employees shall be eligible to join or continue participating in the Scheme under this agreement unless otherwise agreed in writing between the Secretary of State for Justice and the Administering Authority
- 3.4 An Eligible Employee may not be a member of the Scheme if he is a member of another occupational pension scheme (within the meaning of section 150(5) of the Finance Act 2004) in relation to the employment in respect of which he would otherwise be eligible to be designated for Scheme membership.
- 3.5 Within three months of:
- (a) a Member joining the Scheme; or
  - (b) any change in respect of a Member's employment which is material for the Scheme

the Admission Body must ask the Member in writing for a written statement listing all of the Member's previous periods of employment and copies of all notifications previously given to him under the Administration Regulations and the Former Regulations and Earlier Regulations (as defined in the Administration Regulations) unless the Admission Body is satisfied that it or the Administering Authority already has all material information. The request must include a conspicuous statement that it is important that the Member gives full and accurate information especially for ascertaining his rights under the Scheme.

## **4. EFFECT OF THE REGULATIONS**

- 4.1 The Regulations will apply in determining the rights, obligations and actions to be taken by each party to this agreement.
- 4.2 The Regulations will govern the transfer of information between each of the parties.
- 4.3 Each party agrees with the others to take such action as is required to comply with the Regulations.
- 4.4 The Admission Body will:
- (a) adopt the practices and procedures necessary for the operation of the Scheme and the Fund that are required by the Regulations, any other applicable legislation or contained in the employer's guide published by the Administering Authority on its website; and
  - (b) provide such information and assistance as is requested by the Administering Authority to enable it to administer the Scheme.

## **5. PARTICIPATION**

- 5.1 The Admission Body warrants and represents to the Administering Authority and the Secretary of State for Justice that, as at the Effective Date, every Eligible Employee as at that date is employed in connection with the provision of the Services for the purposes of this agreement.



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5.2 The Admission Body undertakes that it will promptly (and in any event within twenty-eight (28) days) notify the Administering Authority and, if requested by the Secretary of State for Justice, the Secretary of State for Justice in writing:

- (a) if any Eligible Employee ceases to satisfy the definition of Eligible Employee (whereupon that employee shall then cease to be an active member of the Scheme); and
- (b) of any Eligible Employee (including a Grace Period Employee) who is to become an active member of the Scheme under the terms of the agreement after the Effective Date.

The Admission Body and the Administering Authority shall keep up to date records of all Eligible Employees participating in the Fund under the terms of the Admission Agreement, which records shall be provided to the Secretary of State for Justice by the Admission Body and/or the Administering Authority on request.

**6. DUTIES OF THE ADMINISTERING AUTHORITY**

The Administering Authority shall comply with all of its obligations as an administering authority under or by virtue of the Regulations in respect of the Eligible Employees.

**7. DUTIES AND UNDERTAKINGS OF THE ADMISSION BODY**

**Undertakings**

7.1 The Admission Body shall comply with all the obligations of a Scheme employer under or by virtue of the Regulations in respect of the Eligible Employees.

7.2 The Admission Body undertakes:

- (a) to provide or procure the provision of any information within its control or available to it relating to the Admission Body's participation in the Fund and the Eligible Employees' participation in the Scheme as is reasonably required by the Administering Authority, such information to be provided to the Administering Authority in a secure manner in line with the Pension Administration Strategy (which information shall include, but not be limited to, the information set out in Schedule 3);
- (b) to comply with the reasonable requests of the Administering Authority to enable the Administering Authority to comply with the requirements of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 or any such replacement requirements; and
- (c) not to do anything to prejudice the status of the Scheme as a Registered Pension Scheme.

**Contributions**

7.3 Without prejudice to the generality of clause 7.1, the Admission Body shall pay to the Fund in relation to the Members:

- (a) employer contributions and any other payments to the Administering Authority as required by the Regulations, this agreement and/or the applicable rates and adjustment certificate prepared by the Actuary, including, for the avoidance of doubt, any contributions required under a revised rates and adjustment certificate prepared in accordance with regulation 64;

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- (b) all amounts from time to time deducted from the pay of the Eligible Employees for payment to the Fund in accordance with the Regulations and the Pension Administration Strategy;
- (c) any further payments required by the Administering Authority under regulations 68, 69 or 71 of the Regulations.

7.4 In respect of the early retirement (whether on grounds of ill-health or otherwise) of any Eligible Employee, the Admission Body shall:

- (a) give the Administering Authority and, if requested by the Secretary of State for Justice, the Secretary of State for Justice notice in writing of such early retirement if practicable, at least two months before the early retirement is due to take effect;
- (b) have regard to any representation made by the Administering Authority and/or the Secretary of State for Justice to the Admission Body with regard to the proposed early retirement;
- (c) not later than the date on which the early retirement shall take effect, pay to the Administering Authority such amount or amounts as the Actuary or the Administering Authority shall in their absolute discretion determine, as notified in writing to the Admission Body, covering any additional liabilities caused by the early retirement; and
- (d) notwithstanding any of the other provisions of this agreement, if the Administering Authority notifies the Admission Body in writing of any additional liability owed to it pursuant to clause 7.4(c) at a date later than the date on which the early retirement took place, pay to the Administering Authority such sum or sums within fourteen (14) days of the date of such demand.

7.5 Without prejudice to Regulation 64(6) of the Regulations:

- (a) if the year on year increases in pensionable pay awarded by the Admission Body to Eligible Employees are greater than the Agreed Rate of Increase assessed as part of the triennial actuarial valuation; or
- (b) the Admission Body awards an additional pension or additional period of membership;

the Administering Authority may require the Admission Body to pay such additional employer contributions as the Actuary shall determine in such manner as the Administering Authority may require. Such additional contributions will be required to be paid within twenty-eight (28) days of being notified that they are due or within such longer period that the Administering Authority shall in its absolute discretion determine and notify in writing to the Admission Body.

**Other obligations**

7.6 The Admission Body undertakes with the Administering Authority and the Secretary of State for Justice that it will promptly (and in any event within twenty-eight (28) days) give them notice in writing of any material change in the terms and conditions of employment which affects entitlement to benefits under the Scheme for or in respect of any Eligible Employee and of any termination of employment to which the provisions of regulation 30(7) (early leavers: business efficiency and redundancy) of the Regulations apply.

7.7 The Admission Body shall promptly (and in any event within twenty eight (28) days) give notice in writing to the Administering Authority and, if requested by the Secretary of State for Justice, the Secretary of State for Justice of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion.

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**Records**

- 7.8 Without prejudice to the provisions of the Regulations, the Admission Body shall maintain such accurate and up-to-date records (including payroll records) and accounts as may in accordance with good commercial practice, be required to fulfil its functions and/or obligations under the Regulations and this agreement and shall permit the Administering Authority, its auditors and its authorised representatives reasonable opportunity during normal business hours, on giving at least seven (7) days' notice in writing to the Admission Body, to examine, inspect and take copies of such records or accounts.
- 7.9 If requested to do so by the Administering Authority, the Admission Body must provide the Administering Authority with a copy of its audited annual accounts in respect of the immediately preceding financial year within fourteen (14) days of such request or if later within fourteen (14) days of the audited annual accounts being signed.
- 7.10 The Admission Body must promptly (and in any event within twenty eight (28) days) give notice in writing to the Administering Authority and the Secretary of State for Justice of any matter which may affect or is likely to affect its participation in the Scheme, and must give immediate notice in writing to the Administering Authority and the Secretary of State for Justice of any actual or proposed change in its status which may give rise to a termination of its participation in the Scheme including (but not limited to) takeover, reconstruction or amalgamation, liquidation or receivership, a change in the nature of its business or constitution or the termination of the Services Agreement.

**Previous membership**

- 7.11 In respect of the admission to membership of the Scheme under this agreement of any Eligible Employee, the Admission Body must, if requested by the Administering Authority in writing, pay to the Administering Authority within twenty-eight (28) days of being notified of the amount due, or within such longer period as the Administering Authority in its absolute discretion shall determine and notify in writing to the Admission Body, such amount as the Administering Authority, acting under the advice of the Actuary, may determine as represents the net additional liabilities resulting from any decisions an Eligible Employee makes in respect of previous membership of the Scheme or of another Registered Pension Scheme, including but not limited to net additional liabilities arising from a request for the Scheme to accept a transfer value of relevant pension rights under regulation 100 of the Regulations. For the avoidance of doubt, this provision shall not apply to any transfer of liabilities pursuant to the Local Government Pension Scheme (Offender Management) Regulations 2014 or in relation to any compulsory transfers of employments to the Admission Body under TUPE or a Staff Transfer Scheme in the context of which it has been agreed by the Secretary of State for Justice that such liabilities are to be treated as fully funded on the Scheme's ongoing basis for the purpose of the Admission Body's liability to fund those liabilities, other than in relation to any net additional liabilities resulting from the award to the Eligible Employee by the Admission Body of a higher than assumed pensionable pay increase or any other benefit enhancements increasing the liabilities that have transferred in.

**Indemnity**

- 7.12 The Admission Body indemnifies and will keep indemnified the Secretary of State for Justice and the Administering Authority against all and any loss, damage, costs and expenses reasonably incurred by the Secretary of State for Justice and the Administering Authority as a result of a breach by the Admission Body of any of its obligations under this agreement, notwithstanding any neglect or forbearance of the Secretary of State for Justice or the Administering Authority in enforcing their rights against the Admission Body under this agreement.

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**8. INDEMNITY OR BOND FROM ADMISSION BODY**

- 8.1 The level of risk exposure arising as a result of the matters mentioned in Paragraph 6 of Part 3 of Schedule 2 of the Regulations has, before the Effective Date, been assessed by the Admission Body, taking account of actuarial advice, in respect of the Eligible Employees to the satisfaction of the Administering Authority and Secretary of State for Justice.
- 8.2 The Administering Authority shall not require a bond or indemnity in relation to the liabilities representing the benefits accrued to the Eligible Employees for so long as a guarantee from the Secretary of State for Justice remains in force in relation to all contributions payable in respect of those liabilities in materially the same form as the SSJ Pensions Guarantee.

**9. ACTUARIAL POOLING**

- 9.1 Subject to Clauses 7.3 to 7.5 and Clause 9.2, the parties to this agreement agree that for the period from the Effective Date until this agreement terminates or ceases to have effect, the employer contribution rate payable to the Administering Authority by the Admission Body shall be assessed on the assumption that all admission bodies engaged in the provision of probation services (including any subcontractors of the Services), who have entered into an admission agreement, the liabilities under which are the subject of a SSJ Pensions Guarantee, shall be assessed in a consistent manner and as if they are a single employer (but only in respect of the contributions payable under the said admission agreement).
- 9.2 The parties to this agreement agree that any costs arising as a result of Pensions Related Discretionary Actions which have not already been met under clauses 7.4 or 7.5 shall be an additional charge to the Admission Body under its rates and adjustment certificate as part of the secondary rate adjustment.
- 9.3 Any changes to actuarial pooling as described in this clause 9 require the written approval of the Administering Authority and Secretary of State for Justice.

**10. FUNDING ON TERMINATION OR THE TRANSFER OF ELIGIBLE EMPLOYEES TO A FUTURE SERVICE PROVIDER**

- 10.1 On:
- (a) the termination of the Services Agreement or, if earlier, on the termination of this agreement; or
  - (b) the transfer of the employment of some of the Eligible Employees to a Future Service Provider (in circumstances where this Admission Agreement is still continuing),

the Secretary of State for Justice will liaise with the Administering Authority as soon as reasonably practicable to determine whether any liabilities will be transferring to and subsumed by a Future Service Provider or to the Secretary of State for Justice for on-going funding before any Exit Contribution payable by the Admission Body is calculated and the Administering Authority will determine whether an Exit Contribution is due from the Admission Body.

- 10.2 The Admission Body shall notify the Secretary of State for Justice and the Administering Authority immediately that it becomes aware that such an Exit Contribution is likely to fall due and the Secretary of State for Justice shall notify the Administering Authority if it becomes aware that an Exit Contribution is likely to fall due.

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- 10.3 Any transfer of liabilities to (and subsumption of those liabilities by) a Future Service Provider or the Secretary of State for Justice will be taken into account in the calculation of the Exit Contribution in the manner agreed between the Secretary of State for Justice and the Administering Authority with the intention that an Exit Contribution will not become payable in respect of any liabilities that are subsumed by a Future Service Provider or the Secretary of State for Justice, as Scheme employers, for future funding, other than in relation to liabilities arising from Pensions Related Discretionary Actions.
- 10.4 Where an Exit Contribution is determined by the Administering Authority as being due, the Administering Authority shall notify the Admission Body and the Secretary of State for Justice of:
- (a) the amount due; and
  - (b) the portion of such Exit Contribution which can be attributed to Pensions Related Discretionary Actions, which amount shall include a payment in respect of the costs of carrying out the necessary actuarial valuation and calculation of the Exit Contribution.
- 10.5 The Admission Body shall pay the Exit Contribution to the Administering Authority in accordance with the LGPS Regulations on or before the due date for payment.
- 10.6 Where the Administering Authority is unable for any reason to obtain an actuarial valuation or issue a revision of the Admission Body's rates and adjustments certificate under regulation 64 (Special circumstances where revised actuarial valuations and certificates must be obtained) of the Regulations then (without prejudice to any powers set out in the Regulations), the Administering Authority shall have the right to obtain from the Actuary an actuarial valuation of the assets and liabilities of the Fund in respect of the relevant Members as at the date this agreement ceases to have effect (in the event of a termination of the agreement) or as at the date the relevant Member transfers to a Future Service Provider (in the event of a transfer of Eligible Employees to a Future Service Provider) calculated on such basis as the Actuary shall recommend but taking into account any subsumption or intended subsumption of liabilities in relation to the relevant Members by another Scheme employer.
- 10.7 The Admission Body will pay to the Fund such contribution (as certified by the Actuary) equal to any deficit in the Fund attributable to the relevant Members (and those entitled under them) shown by the valuation under Clause 10.6.

**Other Outstanding Payments on Termination**

- 10.8 Where any contributions, payments or other sums due under this agreement or the Regulations (including without limitation any payments by instalments agreed) remain outstanding on the termination of this agreement the Admission Body shall pay them in full within twenty eight (28) days of the date of termination of this agreement. Regulation 71 of the Regulations will apply to any late payments by the Admission Body.

**11. PAST SERVICE LIABILITY**

The Admission Body and the Secretary of State for Justice agree with the Administering Authority that any past service liability arising before the Effective Date (or before the commencement of employment with the Admission Body, if later, in the case of a Compulsorily Transferred Employee or a Grace Period Employee) in respect of each Eligible Employee shall be deemed to be 100% funded on the on-going actuarial valuation basis (updated to reflect changes to market conditions since the valuation date) as at the Effective Date (or as at the date of commencement of employment with the Admission Body, if later, in the case of a Compulsorily Transferred Employee or a Grace Period Employee) for the purposes of determining the opening funding position.

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**12. SET OFF**

The Secretary of State for Justice may set off against any payments due to the Admission Body under the Services Agreement an amount equal to any overdue employer and employee contributions and other payments due from the Admission Body to the Fund under this agreement or the Regulations, together with interest payable under the Regulations, and shall promptly account to the Administering Authority for any monies so set off.

**13. RIGHTS OF THE SECRETARY OF STATE FOR JUSTICE**

- 13.1 In the event of an early retirement referred to in clause 7.4, the Secretary of State for Justice may serve a notice on the Administering Authority requesting that, at the cost of the Admission Body, an actuarial assessment of such liabilities is provided to the Admission Body within fourteen (14) days and upon request of the Secretary of State for Justice, the Administering Authority shall make a request to the Admission Body under clause 7.4 (c) or (d).
- 13.2 The Secretary of State for Justice may, acting reasonably, at any time during the course of this agreement, serve a notice on the Admission Body to discharge any sums due from the Admission Body to the Administering Authority. Such sums must be paid within twenty-eight (28) days unless the Administering Authority in its absolute discretion determines that they may be paid over a longer period not exceeding three years or if shorter the remaining term of the Services Agreement.

**14. TERMINATION**

- 14.1 The Administering Authority (or, in the case of clause 14.1(d), the Administering Authority or the Admission Body) may terminate this agreement upon the giving of written notice to all other parties to this agreement in any or all of the following circumstances:
- (a) if the participation of the Eligible Employees in the Scheme at any time adversely affects the status of the Scheme as a Registered Pension Scheme; or
  - (b) if the Admission Body breaches any of the obligations contained within this agreement or the Regulations (but where the breach is capable of remedy only where it has not been remedied within a reasonable time and in any event within twenty-eight (28) days of service of the notice referred to in this clause 14.1); or
  - (c) if the Admission Body fails to pay any sums due to the Administering Authority under this agreement or the Regulations within twenty-eight (28) days of service of the notice referred to in this clause 14.1; or
  - (d) if all the Eligible Employees cease to contribute to the Scheme (on the date with effect from which the last Eligible Employee ceased to contribute); or
  - (e) in the event of the insolvency, winding up or liquidation of the Admission Body (on the date of such insolvency, winding up or liquidation unless otherwise agreed with the Admission Body or the appropriate insolvency practitioner).

The termination will be effective on the date specified above or if not so specified on the date specified in the notice, unless otherwise agreed. The calculation of any sum due on the termination of this agreement will be determined in accordance with clause 10 and the Regulations.

- 14.2 This agreement shall automatically and immediately cease to have effect if:

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- (a) the Admission Body ceases to be a body specified in paragraph 1(e) of Part 3 of Schedule 2 of the Regulations; or
- (b) the date of expiry or earlier termination of the Services Agreement.

14.3 Termination or cessation will not affect accrued rights, obligations or commitments intended to survive termination or cessation.

**15. SERVICE OF NOTICES**

15.1 A notice under this agreement must be in writing and, unless the receiving party acknowledges receipt, is valid if (and only if) it complies with the following provisions:

- (a) the notice must be given by hand or sent by registered post or recorded delivery; and
- (b) the notice must be served:
  - (i) where the receiving party is a company incorporated within Great Britain, at its registered office;
  - (ii) where the receiving party is the Administering Authority, at that party's address shown in this agreement or at any alternative address that is specified in a notice given by that party to the other parties; or
  - (iii) where the receiving party is the Secretary of State for Justice, at the Secretary of State for Justice, c/o the Director of Finance, National Offender Management Service.

15.2 Unless it is returned through the Royal Mail undelivered, a notice sent by registered post or recorded delivery is to be treated as served on the third day after posting whenever and whether or not it is received.

**16. SEVERANCE**

16.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

16.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the intention of the parties.

**17. RIGHTS OF THIRD PARTIES**

No person who is not a party to this agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**18. PUBLIC INSPECTION**

This agreement shall be available for public inspection at the above named offices of the Administering Authority and the Secretary of State for Justice during usual business hours (but with Schedules 1 and 2 redacted as appropriate to comply with all applicable data protection laws).

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**19. AMENDMENT**

The parties to this agreement may, with the agreement of all of them in writing, amend this Agreement by deed provided that:

- (a) the amendment is not such that it would breach the Regulations or any other legal or regulatory requirements applicable to the Scheme; and
- (b) the amendment would not prejudice the status of the Scheme as a Registered Pension Scheme.

**20. FAILURE TO AGREE**

Where the parties cannot reach agreement on any matter that requires agreement under this agreement:

- (a) the matter shall be referred to an actuary, chosen by agreement between the parties or in default of agreement by the President of the Institute and Faculty of Actuaries at the request of any party;
- (b) the actuary's determination shall be final; and
- (c) the actuary's costs of any referral shall be borne as the actuary shall specify, or in default by the party the actuary has found against in respect of the referral matter. Each party shall bear its own costs arising out of the referral, including legal costs and the costs and expenses of any witness.

**21. APPLICABLE LAW**

- 21.1 This agreement and any claim or matter arising under or in connection with this agreement (including non-contractual disputes or claims) are governed by and construed in accordance with the Law of England and Wales.
- 21.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

**22. COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

This agreement was executed by the parties hereto as a deed the day and year first before written



**SCHEDULE 1**

**LIST OF TRANSFERRING ACTIVE ELIGIBLE EMPLOYEES**

**Surname, Name - National Insurance Number**

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**SCHEDULE 2**

**LIST OF TRANSFERRING NON-ACTIVE ELIGIBLE EMPLOYEES**

**Surname, Name - National Insurance Number**

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**SCHEDULE 3**

**INFORMATION TO BE RETAINED AND PROVIDED TO THE ADMINISTERING AUTHORITY  
BY AN ADMISSION BODY**

1. Pay records for the previous 13 years for all Eligible Employees with pre 1 April 2014 pensionable service under the Scheme.
2. The last job description of each Eligible Employee who leaves service of the Admission Body and becomes a deferred member, a deferred pensioner member or a pensioner member.
3. Pensionable pay for each relevant Eligible Employee at the preceding 31 March of each year.
4. Hours worked, any periods of absence and all contributions (including additional contributions) payable by each relevant Eligible Employee.

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**APPENDIX 1**

**AGREED FORM SECRETARY OF STATE FOR JUSTICE PENSIONS GUARANTEE**

**OFFICIAL SENSITIVE**

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**THE COMMON SEAL of TAMESIDE  
METROPOLITAN BOROUGH COUNCIL**

was hereunto affixed in the presence of:

Borough Solicitor

**EXECUTED** as a deed by )  
[**COMMUNITY REHABILITATION COMPANY**] )  
acting by [**NAME OF DIRECTOR**], a director ) .....  
in the presence of: ) Director

Witness's Signature .....

Name: .....

Address: .....

.....

**THE CORPORATE SEAL of**  
**THE SECRETARY OF STATE FOR JUSTICE**

hereunto affixed is authenticated by:

Authorised by the Secretary of State