

SCHEDULE 23

Pensions

1. Best Value Direction

1.1 Where the Operator or a Sub-Contractor employs any Eligible Employees from a Relevant Transfer Date, the Operator shall procure that it and/or each relevant Sub-Contractor shall offer those Eligible Employees membership of the LGPS for so long as they remain Eligible Employees or eligible to be active members of the LGPS under the LGPS Regulations or the Operator Admission Agreement.

1.2 If the Operator and/or each relevant Sub-Contractor:

1.2.1 is not able to offer the Eligible Employees membership of the LGPS from a Relevant Transfer Date in accordance with paragraph 1.1 (Best Value Direction); or

1.2.2 ceases to offer the Eligible Employees membership of the LGPS from a later date (the "Cessation Date") for a reason other than the Eligible Employees no longer being eligible for active membership of the LGPS under the LGPS Regulations or the Operator Admission Agreement;

the Operator shall procure that it and/or each relevant Sub-Contractor shall (where applicable) make alternative arrangements (the "**Operator Scheme**") to secure pension protection for the Eligible Employees in accordance with the Best Value Direction.

2. Participation in the Local Government Pension Scheme

2.1 The Operator shall procure that it and/or each relevant Sub-Contractor shall become an Admission Body and the Operator shall procure that it and/or each relevant Sub-Contractor shall execute an Operator Admission Agreement which will have effect on and from the Relevant Transfer Date.

2.2 The Authority shall before the Relevant Transfer Date execute each of the Operator Admission Agreements referred to in paragraph 2.1 and will procure that the Administering Authority executes each such Operator Admission Agreement before the Relevant Transfer Date.

2.3 The Authority shall provide all reasonable assistance and cooperation to the Operator and/or each relevant Sub-Contractor to become an Admission Body in accordance with paragraph 2.1.

2.4 The Authority shall procure that where the Operator and/or Sub-Contractor are responsible for any Post Transfer Pension Liabilities through paragraph 3.6 the Administering Authority shall identify:

2.4.1 the proportion of any employer contribution or payment that is attributable to liabilities that the Operator and/or the Sub-Contractor is responsible for in accordance with paragraph 3.6; and

- 2.4.2 the proportion of that amount that is attributable to Pre Transfer Pension Liabilities and Post Transfer Pension Liabilities.
- 2.5 The Authority shall be responsible for, and hold the Operator harmless against, any costs incurred by the Administering Authority in respect of paragraphs 2.2 and 2.3.
- 3. **Contributions to the Local Government Pension Scheme**
 - 3.1 **Employer contributions**
 - 3.1.1 The Operator shall procure that it and/or any relevant Sub-Contractor (as applicable) shall pay to the Fund all employer contributions and other payments that are due under the LGPS Regulations and/or any Operator Admission Agreement.
 - 3.1.2 All contributions payable by the Operator/Sub-Contractor (and any sub-contractor) in respect of the Eligible Employees are and shall be calculated on the basis that the pension rights of the Eligible Employees in respect of the Fund accrued prior to the Relevant Transfer Date are fully funded as at the Relevant Transfer Date on an ongoing basis in accordance with the assumptions applied by the actuary appointed by the Fund in the latest triennial valuation. For the avoidance of doubt fully funded shall mean that the Operator/Sub-contractor shall be notionally allocated an amount of assets from the Authority as a scheme employer in the Fund equal to the value placed on the liabilities as at the Relevant Transfer Date as determined by the actuary appointed by the Fund.
 - 3.2 Subject to paragraph 3.6, if at any time during the term of this Agreement, the Administering Authority, pursuant to the Operator Admission Agreement or the LGPS Regulations, requires the Operator or any Sub-Contractor to pay employer contributions or payments to the Fund in excess of the Agreed Contribution Rate, the excess of employer contributions above the Agreed Contribution Rate (the "Excess Amount") shall be paid by the Operator or the Sub-Contractor, as the case may be, and the Operator or Sub-Contractor shall be reimbursed by the Authority in accordance with paragraph 3.10.
 - 3.3 Subject to paragraph 3.6, if during the term of this Agreement, the Administering Authority, pursuant to the Operator Admission Agreement or the LGPS Regulations, requires the Operator or any Sub-Contractor to pay employer contributions or payments to the Fund in aggregate below the Agreed Contribution Rate, the Operator shall procure that it or the Sub-Contractor, as the case may be, shall pay to the Authority the Shortfall Amount in accordance with paragraph 3.11.
 - 3.4 For the purposes of paragraph 3.3 above, the **"Shortfall Amount"** shall be an amount equal to the difference between:
 - 3.4.1 the contributions and payments that would have been paid if contributions were equal to the Agreed Contribution Rate; and

- 3.4.2 the contributions and payments levied on the Operator or Sub-Contractor (as applicable) by the Fund.
- 3.5 The Authority shall reimburse the Operator in accordance with paragraph 3.10 in respect of any exit payment as defined in the LGPS Regulations (the **"Exit Payment"**) which the Operator and/or any relevant Sub-Contractor (as applicable) become liable to pay. In the event of the Operator and/or any Sub-Contractor being entitled to a exit credit as defined in the LGPS Regulations (the "Exit Credit"), the Operator shall procure that it pays the Exit Credit to the Authority within 10 Business Days of the Operator and/or Sub-Contractor being in receipt of the Exit Credit.
- 3.6 The Operator shall and shall procure that any Sub-Contractors shall at all times be responsible for that proportion of any Post Transfer Pension Liabilities attributable to the following:
- 3.6.1 any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the LGPS Regulations or otherwise other than where;
- 3.6.1.1 the Authority has entered into a contractual commitment to make the relevant Eligible Employee redundant before the Relevant Transfer Date; or
- 3.6.1.2 it arises as a result of the termination or expiry of this Agreement; or
- 3.6.1.3 the termination(s) have been agreed between the Authority and the Operator/Sub-Contractor;
- 3.6.2 any employer contributions relating to the costs of flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Operator or any relevant Sub-Contractor;
- 3.6.3 any employer contributions relating to the costs of enhanced benefits made at the discretion of the Operator or any relevant Sub-Contractors including without limitation under Regulation 31 of the LGPS Regulations or otherwise save where the Operator / Sub-Contractor is obliged under paragraph 8; and
- 3.6.4 any increase to the employer contribution rate resulting from the award of pay increases by the Operator or relevant Sub-Contractors in respect of all the Eligible Employees which are materially in excess of those assumed by the Fund in respect of the Operator and/or Sub-Contractor and which are not attributable to:
- 3.6.4.1 increases to cover the cost of living; or
- 3.6.4.2 alignment with market rates; or
- 3.6.4.3 to recognise promotion, increased responsibility or performance,

but the Operator / Sub-Contractor shall not be responsible for any costs under paragraphs 3.6.1 to 3.6.3 arising as result of complying with paragraph 8. Any contributions payable by the Operator/Sub-Contractor (and any sub-contractor) in respect of the Eligible Employees are calculated on the basis that the pension rights of the Eligible Employees in respect of the Fund accrued prior to the Relevant Transfer Date are fully funded as at the Relevant Transfer Date on an ongoing basis in accordance with the assumptions applied by the actuary appointed by the Fund in the latest triennial valuation. For the avoidance of doubt fully funded shall mean that the Operator/Subcontractor shall be notionally allocated an amount of assets from the Authority as a scheme employer in the Fund equal to the value placed on the liabilities as at the Relevant Transfer Date as determined by the actuary appointed by the Fund.

- 3.7 For the purposes of calculating the Exit Payment under paragraph 3.5 or the Excess Amount under paragraph 3.2, any part of an Exit Payment or Excess Amount, as the case may be, which is attributable to any matters for which the Operator or Sub-Contractors are responsible for under paragraph 3.6 shall be disregarded.
- 3.8 For the purpose of calculating the Shortfall Amount under paragraph 3.3, any increase in the contributions or payments which are attributable to matters which are the Operator's or relevant Sub-Contractor's responsibility for under paragraph 3.6 shall be disregarded.
- 3.9 For the purposes of calculating the Exit Credit under paragraph 3.5, any reduction in the Exit Credit attributable to matters which are the Operator's or relevant Sub-Contractor's responsibility under paragraph 3.6 shall be disregarded.
- 3.10 Where an Excess Amount or an Exit Payment is paid by the Operator or any Sub-Contractor, the Operator shall, subject to paragraph 3.12 forthwith as the liability to make the payment arises, invoice the Authority for payment of the Excess Amount or Exit Payment and the Authority shall make payment to the Operator or any Sub-Contractor of the required amount within the lesser of 10 Business Days of receipt of the invoice or the date one day before the Operator / Sub-Contractor is required to pay the sum to the Fund.
- 3.11 Where a Shortfall Amount is payable by the Operator or any Sub-Contractor, the Operator shall or shall procure that the Sub-Contractor, forthwith as the liability arises, notify the Authority of the Shortfall Amount, subject to paragraph 3.12 and shall make payment to the Authority of the required amount within 10 Business Days of the notification.
- 3.12 If there is a dispute about the amount of payments due under paragraphs 3.1, 3.2 and/or 3.3, the Operator and/or the Sub-Contractor, as the case may be, and the Authority shall co-operate in good faith to reach agreement about the amounts due. If agreement cannot be reached about the amounts due then within 28 Business Days of one party notifying the other that a dispute has arisen, the matter may be referred by either party to an independent actuary agreed by the parties or, failing such agreement

within 14 Business Days from the first nomination of an actuary by the Operator and/or the Sub-Contractor, as the case may be, or the Authority to the other, the independent actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application of either the Operator and/or the Sub-Contractor, as the case may be, or the Authority. The independent actuary so appointed shall act as expert and not as arbitrator, his decision shall be final and binding on the parties in the absence of manifest error and his costs shall be split equally.

4. Indemnity

Without prejudice to the generality of this paragraph 4, the parties agree to indemnify one another from and against all Direct Losses suffered or incurred by them which arise from any breach by the parties of this Pensions Schedule to the extent that such liability arises before or as a result of the termination or expiry of this Agreement or the termination of participation within the Fund (howsoever caused).

5. Indemnity or Bond or Guarantee

- 5.1 At the written request of the Authority, the Operator shall procure that it and each relevant Sub-Contractor shall obtain as soon as reasonably practicable an indemnity or bond required in accordance with the Operator Admission Agreement.
- 5.2 Where for any reason it is not desirable for the Operator or Sub-Contractor to enter into an indemnity or bond in accordance with paragraph 5.1, the Operator shall procure that it and each relevant Sub-Contractor shall as soon as reasonably practicable secure a guarantee in a form acceptable to the Administering Authority in accordance with the Operator Admission Agreement.
- 5.3 The Authority shall reimburse the Operator / Sub-Contractor for any costs for the establishment and maintenance of any indemnity or bond under this paragraph 5.

6. Right of Set-Off

The Authority shall have a right to set off against any payments due to the Operator under this Agreement an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Operator or from any relevant Sub-Contractor (as applicable) under the LGPS Regulations and/or the Operator Admission Agreement.

7. Undertaking from the Operator

The Operator 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:

- 7.1 all information which the Authority or the Administering Authority or their respective professional advisers may reasonably request from the Operator or any relevant Sub-Contractor for the administration of the LGPS and matters relating to the Operator and/or the relevant Sub-Contractor complying with its obligations under paragraph 1.2 shall be provided immediately on request;

- 7.2 until the Relevant Transfer Date, it shall not and shall procure that any relevant Sub-Contractor shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in paragraph 1 to paragraph 6 inclusive without the consent in writing of the Authority and the Administering Authority (not to be unreasonably withheld or delayed); and
- 7.3 it shall and shall procure that any relevant Sub-Contractor shall procure that any of its Eligible Employees who cease to be engaged in the provision of the Services or in any other way ceases to be eligible for membership of the LGPS are offered membership of an alternative pension scheme in accordance with the employers obligations under Chapter 1 of Part 1 of the Pensions Act 2008.

8. Discretionary benefits

Where the Operator or Sub-Contractor is an Admission Body they shall procure that any discretionary benefits under the LGPS Regulations shall be awarded on the basis of the Authority's written policy in relation to such benefits (which the Authority shall provide upon request) in place at the time the relevant discretion comes to be exercised. The additional employer payments to the Fund by procuring such discretionary benefits shall form part of the contributions accounted for under paragraph 3.

9. Claims from Eligible Employees or Trade Unions

The Operator hereby indemnifies the Authority from and against all Direct Losses suffered or incurred by it which arise from claims by Eligible Employees of the Operator 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:

- 9.1 relate to pension rights in respect of periods of employment and pensionable service accrued on and after the Relevant Transfer Date until the date of termination or expiry of this Agreement; or
- 9.2 arise out of the failure of the Operator and/or any relevant Sub-Contractor to comply with the provisions of this pensions schedule before the date of termination or expiry of this Agreement.

10. Contracts (Rights of Third Parties) Act 1999

In respect of Eligible Employees, the Authority and the Operator or Sub-Contractor agree that clause 71 (Third party rights) of this Agreement shall not apply to paragraph 1.1 of this pensions schedule.

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 Operator shall and shall procure that any relevant Sub-Contractor 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 this pensions schedule provided that references to the **"Sub-Contractor"** will become references to the New Employer, references to **"Relevant Transfer Date"** will become references to 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.

12. Pension Issues on Expiry or Termination

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

- 12.1 maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Operator 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);
- 12.2 promptly provide to the Authority such documents and information mentioned in paragraph 12.1 (*Pension Issues on Expiry or Termination*) which the Authority may reasonably request in advance of the expiry or termination of this Agreement; and
- 12.3 fully co-operate (and procure that the trustees of the Operator Scheme shall fully co-operate) with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Operator or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement.

13. Compliance with section 257 and 258 Pensions Act 2004

The Operator shall and shall procure that any relevant Sub-Contractor shall comply with sections 257 and 258 of the Pensions Act 2004 in relation to any Relevant Employee (excluding, for the avoidance of doubt any Eligible Employees).

APPENDIX 1
Eligible Employees

Appendix 1

