

London Borough of Lewisham Council Procedure for granting Lewisham Contractors Admitted Body Status to the London Borough of Lewisham Pension Fund (Council and maintained school contractors only)

This policy has been produced by London Borough of Lewisham Council ("the Council") as a Scheme Employer. The Council is also the Administering Authority for the London Borough of Lewisham Pension Fund ("the Fund"). The policy will be reviewed every three years as part of formal valuations of the Fund (the next is due 31 March 2022) or when changes to the Regulations take place (such as those expected to introduce Fair Deal II in respect of local government outsourcings).

This policy takes effect for admission agreements commencing on or after 1 January 2022.

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SUMMARY OF GENERAL PRINCIPLES RELATING TO PASS-THROUGH ARRANGEMENTS

- The contractor's pension contribution rate as a percentage of pay is set at the outset of the contract.
- The default position is that a pass-through arrangement will apply in relation to most outsourcings.
- The contractor's employer contribution rate will be set at 25% of pay where 20 or less members of staff are eligible to be members of the LGPS.
- The Council reserves the right, for larger outsourcings where more than 20 members of staff are eligible to be members of the LGPS, to determine a bespoke employer rate, calculated by the Fund Actuary.
- The fixed contribution rate will be fixed for the original period of the contract (e.g. for a 3 + 1 + 1 contract, the rate would be fixed for 5 years).
- The Council retains responsibility for fund performance and longevity under its pass-through arrangement, irrespective of the size of the outsourcing.
- A cessation valuation will be carried out when the contractor becomes an exiting employer, as required under the LGPS Regulations. However, any deficit or surplus relating to the employer will become the responsibility of the Council.
- For most outsourcings, the contractor will not be required to obtain a bond where 20 or less members of staff are eligible to be members of the LGPS.
- The Council reserves the right, for larger outsourcings where more than 20 members of staff are eligible to be members of the LGPS, to require the contractor to provide a bond to cover the potential early retirement strain costs due to redundancies made in the event of the contractor's insolvency. The level of bond should be reviewed annually.

1. LEGISLATIVE BACKGROUND

- 1.1 Employees outsourced from the Council must be offered pension benefits that are the same, better than, or count as being broadly comparable to, the LGPS (Best Value Authorities Staff Transfer (Pensions) Direction 2007). This is achieved by:
- a. The employees remaining in the LGPS and the new employer becoming an admitted body to the Fund and making the requisite employer contributions; or
 - b. The employer offering the employees membership of an alternative broadly comparable scheme, as approved by the Government Actuary's Department (GAD).

For the avoidance of doubt, this policy includes all outsourcings from Local Education Authority funded schools which include members eligible for participation in the LGPS.

2. PASS THROUGH ARRANGEMENTS FOR LONDON BOROUGH OF LEWISHAM COUNCIL CONTRACTORS ADMITTED TO THE FUND

- 2.1 Pass-through is an arrangement whereby the Council retains the main risks of fluctuations in the employer contribution rate during the life of the contract and the risk that the contributions paid may be insufficient to meet the employees' pension benefits at the end of the contract. Examples of risks which could cause the employer contribution rate to fluctuate could include the interest on the surplus / deficit, investment performance, changes to the discount rate, changes to longevity assumptions, a change in the membership profile. The contractor is responsible for early retirement strain costs, disproportionate salary increases and ill health retirements [not approved by the Fund's occupational health physician].
- 2.2 Therefore, the Council has allocated risk to the party best able to manage it which allows for a smooth and structured transition from the Council to contractors, as well as smoother ongoing arrangements.
- 2.3 It is the Council's understanding that contractors may be able to account for pension fund admissions on a defined contribution basis and therefore no formal FRS102 / IAS19 report may be required (contractors are effectively paying a fixed rate and are largely indemnified from the risks inherent in providing defined benefit pensions). However, contractors should take their own advice on the accounting position from their auditors. However, as the Council is retaining the pension fund risk relating to contractors, these liabilities will be included in the Council's IAS19 disclosure.
- 2.4 Whilst Regulation 64 of the Local Government Pension Scheme Regulations 2013 requires an actuarial valuation of liabilities whenever an admission agreement ceases to have effect, because any liability in the Fund will be subsumed by the Council, the cessation valuation will simply record **no cessation debt or exit credit** is payable to or from the Fund.
- 2.5 Adherence to this policy (including the necessary involvement of procurement, legal, pensions and human resources personnel) is the responsibility of the relevant responsible service manager for any given outsourcing.

3. OUTSOURCINGS OF EMPLOYEES WHO ARE ACTIVE MEMBERS IN THE FUND

- 3.1 Fund officers and the Fund Actuary must always be notified that an outsourcing has taken place, regardless of the number of members involved.
- 3.2 Contractors will be assigned a contribution rate of 25% of pay. However, for larger outsourcings where 20 or more staff involved in the outsourcing are eligible to participate in the LGPS, the Council will have a bespoke employer rate calculated by the Fund Actuary.
- 3.3 Where a bespoke employer rate calculation is required, this should be carried out in advance of any tender for services, to ensure the pension costs can be transparently communicated to bidders.
- 3.4 The fixed contribution rate of 25% (or the bespoke rate calculated by the Fund Actuary where more than 20 staff are involved) will be fixed for the period of the contract (e.g. for a 3 + 1 + 1 contract, the rate will be fixed at 25% of pay for 5 years).
- 3.5 The Actuary's Rates and Adjustment certificate will reflect the rate applicable to each contractor.
- 3.6 Contractors must pay the Fund the appropriate employer and employee contributions by the 19th day of the following month or 22nd of the month if paying electronically.

4. Bonds

- 4.1 Under the LGPS Regulations, the contractor is obliged to carry out a risk assessment to the satisfaction of the Council on each outsourcing, and annually, to determine the level of bonds that are required.
- 4.2 The level of bond under the Council's pass through policy will be nil. However, for large outsourcings where 20 or more staff involved in the outsourcing are eligible to participate in the LGPS, the Council reserves the right to require the contractor to instruct the Fund (who in turn would instruct the Fund's Actuary) to carry out a risk assessment to determine the level of bonds that are required.
- 4.3 In these cases, the bonds should cover the pension costs the Council would be responsible for in the event that a contractor has entered insolvency and is unable to meet the strain costs caused by early retirement on the grounds of redundancy.
- 4.4 Therefore, where 20 or more staff are involved, tender documents should not be issued until the bond calculation has been carried out by the Actuary to ensure bidders have full visibility of all pension costs.
- 4.5 In addition to the bonds, the Council retains a right to set off the value of any updated contributions against the contract price during the term of the admission agreement.
- 4.6 The procurement process will require all bidders to price for the redundancy bond (where required) for the life of the contract.

5. Cessation / exit valuation

- 5.1 A cessation valuation is required when a contractor no longer has any active members in the Fund. This could be due to a contract coming to its natural end, insolvency of a contractor or the last active member leaving employment or opting out of the LGPS. Where a pass-through arrangement is in place, the pension fund assets and liabilities associated with a contractor will pass back to the Council. Therefore, any deficit or surplus relating to the contractor will become the responsibility of the Council. This will normally result in the Actuary certifying an exit debt of nil.
- 5.2 However, in some circumstances, the winning bidder will be liable for additional pension costs that arise due to items over which it exerts control (e.g. strain costs associated with redundancies). The risk allocation is as follows:

Risks	Council	Contractor
Surplus/deficit prior to the transfer date	✓	
Interest on surplus/deficit	✓	
Investment performance of assets held by the Fund	✓	
Changes to the discount rate that affect past service liabilities	✓	
Changes to the discount rate that affect future service accrual.	✓	
Change in longevity assumptions that affect past service liabilities	✓	
Changes to longevity that affect future accrual	✓	
Price inflation / pension increases that affect past service liabilities	✓	
Price inflation / pension increases that affect future accrual.	✓	
Exchange of pension for tax free cash (commutation rate).	✓	
Ill health retirement experience		✓ ¹
Strain costs attributable to granting early retirements (e.g. redundancy, efficiency, waiving actuarial reductions on voluntary early retirements and the award of ill health early retirement)		✓
Greater/lesser level of withdrawals	✓	
Rise in average age of employee membership	✓	
Changes to LGPS benefit package	✓	
Salary increases		✓
Excess liabilities attributable to the contractor granting pay rises that exceed those assumed in the last formal actuarial valuation of the Fund		✓
Award of additional pension or augmentation		✓

Note 1 – If an ill health retirement is approved by the Fund’s occupational health physician, then any strain resulting from the retirement will be the responsibility of the Council rather than the Contractor. If not approved by the Fund’s occupational health physician, then the costs of the retirement will be the responsibility of the Contractor.

6. Process Map

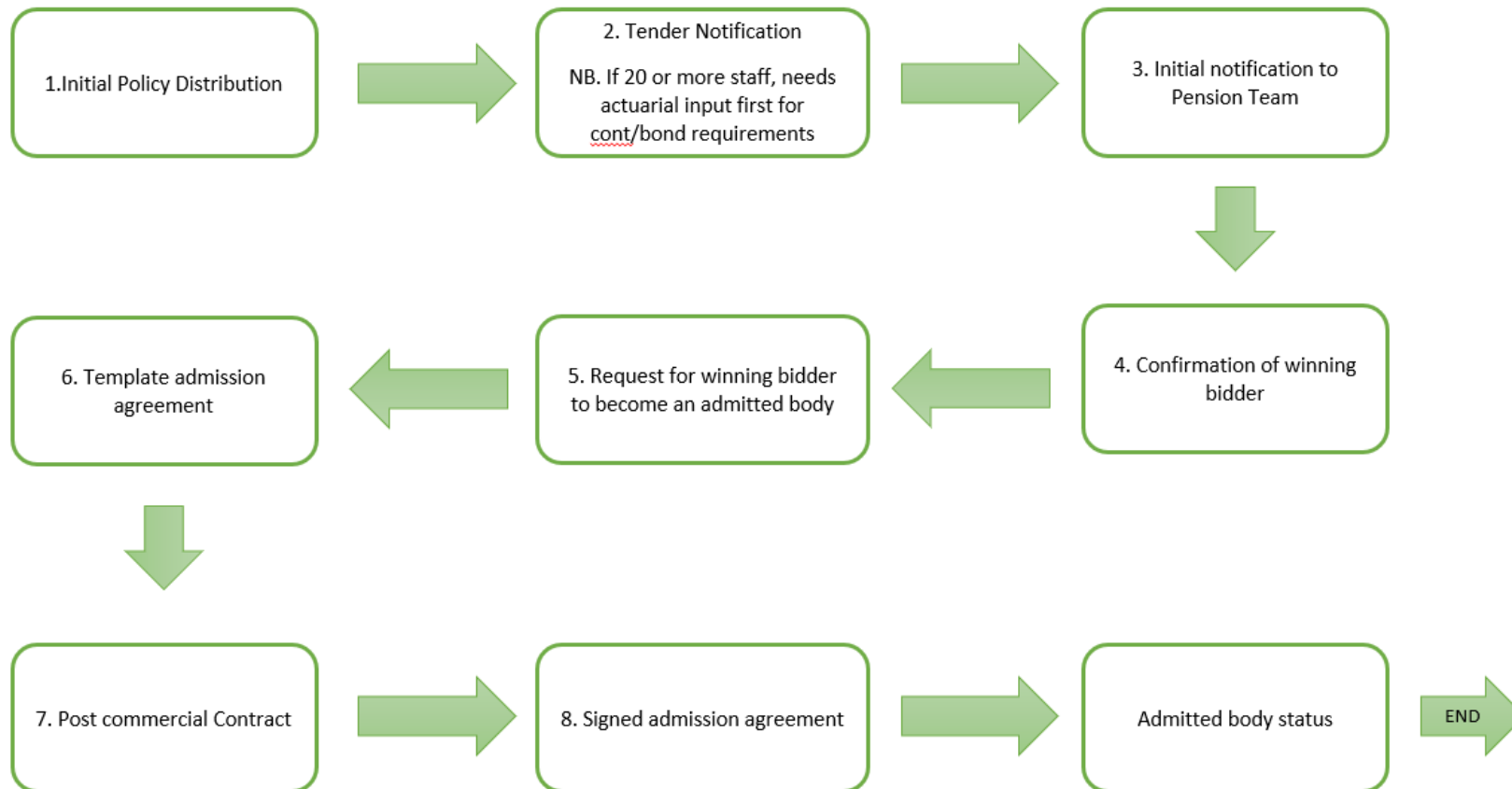
- 6.1 **Initial policy distribution** - Each Council department or LEA school that has responsibility for staff/service outsourcing, must be advised of this policy. Following that confirmation, the process detailed below from paragraph 6.2 to 6.9 must be adhered to by the Council and (where applicable) the winning bidder.
- 6.2 **Actuarial calculations** – where 20 or more pension fund members are involved in the outsourcing, the Pension Fund should be notified in order to obtain an evaluation of the contribution rate and potential bond/indemnity

that would apply under this policy. The tender notification should not be carried out until the results of these calculations are complete.

- 6.3 **Tender Notification** - The Council must publicise this funding pass through policy as part of its tender process to bidders. This should confirm that no pension funding deficit (or credit) will take place at the end of the contract (assuming the terms of this policy are adhered to). It should also advise the employer contribution rate as detailed in **paragraphs 3.1**. Further, it should confirm that the Council will not be responsible for pension funding strain costs relating to ill health (unless approved by the Fund's occupational health physician), redundancy or efficiency retirement for employees who are currently employed by the winning bidder and are in the Local Government Pension Scheme. To aid this process, a Pension Information Memorandum (Appendix 1) can be provided.
- 6.4 **Initial notification to Pension Team** – The Council must contact the Lewisham Pension Fund when a tender (or re-render of an outsourcing contract) is taking place and staff (or former staff) are impacted. The Pension Fund must be advised prior to the start of the tender.
- 6.5 **Confirmation of winning bidder** – The Council must immediately advise the Pension Fund of the winning bidder and confirm what pension protection route is chosen 1.1 a or b. The remainder of this process note, relates to a **1.1 a** route – request to become an admitted body within the Lewisham Pension Fund.
- 6.6 **Request for winning bidder to become an admitted body** – The winning bidder (in combination with the Council), should request to the Lewisham Pension Fund that it wishes to become an admitted body within the Fund.
- 6.7 **Template admission agreement** – a template admission agreement will be used for admissions under this policy. It will set out all agreed points relating to exit conditions, employer contribution rate and employer funding responsibilities. An example of this template agreement is shown in **section 6** of this policy. Only in exceptional circumstances will the wording within the template agreement be changed. All admission agreements must be reviewed (including any changes) by the Fund's legal advisors.
- 6.8 **Post commercial contract** – Once the commercial contract has been signed, the winning bidder is then able to enter the Lewisham Pension Fund.
- 6.9 **Signed admission agreement** - Signing of the admission agreement can then take place between an appropriate representative of the winning bidder and (normally) the Director of Finance for Lewisham Pension Fund (acting in their role as lead officer for the Lewisham Pension Fund and Lead Finance officer for the London Borough of Lewisham Council) or designated representative of the Fund. The admission document would then be sent to the Lewisham Council legal department for sealing. It is at this point the Fund can receive contributions.
- 6.10 **Admitted body status** – The Pension Fund will advise the requirements and responsibilities of the winning bidder within the Lewisham Pension Fund.

[Next page for process outline]

Pass Through



Appendix 1

Pensions Information for Bidders

1 Introduction

This paper is being provided to give potential bidders information on the pensions aspects of becoming an admission body in the London Borough of Lewisham Pension Fund (“the Fund”), including the pension costs which must be met by the winning bidder. It should be read in conjunction with the Fund’s admissions policy and the Council’s pass-through policy.

Please note, the Council’s pass-through policy is only applicable to contracts awarded by the Council or its Local Education Authority bodies. It does not apply to any contracts awarded by other Fund employers (including academies) which may have their own funding policy for outsourced contracts.

2 Fund Information

The Local Government Pension Scheme

The Local Government Pension Scheme (“the LGPS”) is a statutory multi-employer pension scheme providing retirement and protection benefits to local government (and related) staff. The scheme is a ‘funded’ pension scheme such that the scheme accumulates and invests assets to pay member benefits.

The LGPS is split into regional funds spread across England, Wales and Scotland (Northern Ireland and the Isle of Man also run similar schemes) which are usually run by local authorities known as administering authorities or scheme managers.

The scheme rules and benefits are set out in The Local Government Pension Scheme Regulations 2013 (as amended) (“the Regulations”). For further details, please refer to the timeline regulations on <http://www.lgpsregs.org/>.

London Borough of Lewisham Pension Fund

The London Borough of Lewisham Pension Fund (“the Fund”) is one of the regional LGPS funds. It is administered by the London Borough of Lewisham (“the Administering Authority” and “the Council”).

The Regulations require the Administering Authority to maintain strategies in respect of the administration of the Fund which are available on request. The main documents pertaining to potential bidders’ participation in the scheme are:

- The Funding Strategy Statement which sets out how the Fund is funded (e.g. how contributions are set);
- The Administration Strategy which sets out the standards for administering the Fund; and
- The Investment Strategy Statement which sets out how the Fund’s assets are invested.
- The Council also maintains a **Pass-Through Policy** which applies to all Council outsourcings (including contracts awarded by Local Education Authority schools).

Member benefits

The benefits earned by members of the LGPS are set out in the Regulations. These are set out below:

- Service accrued to 31 March 2008
 - A final salary benefit of 1/80th of final salary per year of service; and
 - A lump sum at retirement of 3/80th of final salary per year of service.
- Service accrued from 1 April 2008 to 31 March 2014
 - A final salary benefit of 1/60th of final salary per year of service.
- Service accrued from 1 April 2014
 - A career average revalued earnings (CARE) benefit with revaluation based on the Consumer Prices Index (CPI) and an accrual rate of 1/49th of pensionable salary per year of service.
 - Members can opt for an accrual rate of 1/98th of pensionable salary per year of service and pay reduced employee contributions while protection benefits remain unaffected. This is known as the “50/50” option.

In addition to the above entitlements, members are allowed to commute pension for additional tax-free cash at £12 of cash for every £1 of pension given up. The maximum amount of tax-free cash cannot exceed 25% of the capital value of pension benefits.

Each member's normal pension age is their respective State Pension Age. However, certain protections are in place for longer served members. Details can be found in The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 which can be found on <http://www.lgpsregs.org/>.

3 Key Policies and Regulations

Best Value Directions

Separate statutory guidance has been issued to Best Value employers in England, Wales and Scotland setting out the pension protection they must ensure is offered to transferring staff.

The Best Value Authorities Staff Transfers (Pensions) Direction 2007

<http://webarchive.nationalarchives.gov.uk/20120919132719/www.communities.gov.uk/documents/localgovernment/doc/best-value-authorities.doc>) requires the winning bidder to offer transferring staff the opportunity to remain in their existing public sector pension scheme or to be transferred to a private sector broadly comparable scheme (including those previously compulsorily transferred out of their public sector scheme). The Directions are currently under review in light of the reform of Fair Deal (see below).

Fair Deal

The Government published the reformed Fair Deal policy on 4 October 2013

<https://www.gov.uk/government/publications/fair-deal-guidance>). Fair Deal does not apply to Best Value employers. However, the key requirements of Fair Deal are similar to that of the Best Value Direction. The main difference is that the option to transfer staff to a broadly comparable scheme has been removed (except in exceptional circumstances).

Fair Deal as it applies to the wider LGPS is still under consideration.

The Regulations

The winning bidder will be admitted to the Fund as an admission body under Part 3 Schedule 2 of the Regulations should the winning bidder meet the Administering Authority's admissions requirements. Please speak to the Fund for more information and specific details.

Admission Policy

The Fund provides information to prospective employers, setting out the process for gaining admission to the Lewisham Pension Fund. The Fund will provide further details to the winning bidder.

Automatic/Contractual Enrolment

The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (<http://www.legislation.gov.uk/ukxi/2010/772/contents/made>) requires all new employers to contractually enrol all eligible non-joiners transferred to the winning bidder's portion of the Fund at the commencement of the contract. As a result, the winning bidder should consider the costs of enrolling current non-members to the scheme at the outset of the contract.

Principles of Good Employment Practice

The Principles of Good Employment Practice can be found here: <https://www.gov.uk/government/publications/principles-of-good-employment-practice> and is applicable to the winning bidder. In particular, if the bidder takes on new staff that will sit alongside former public sector workers, the new staff should have fair and reasonable pay, terms and conditions.

Discretions Policy

All employers are required to create and maintain a discretions policy during their participation in the Fund. The Administering Authority will provide further details to the winning bidder.

4 Pension costs

Contribution Rates

The LGPS Regulations require the winning bidder's rate to be broken down into:

- the **Primary Contribution Rate** – defined as the actuarial cost of new benefits being earned by staff expressed as a percentage of pensionable pay; and
- the **Secondary Contribution Rate** – any adjustment to the Primary Contribution Rate (such as additional contributions to repair any deficits) which can be expressed as a percentage of pensionable pay or as annual lump sum amounts.

In practice and in accordance with the Council's funding 'Pass-through' Policy, the winning bidder's total contribution rate (the primary rate plus the secondary rate) will be "fixed" by applying a "pass through" arrangement at the outset.

The fixed level of employer contributions to be paid by the winning bidder is currently **25% of pensionable pay** over the contract period (e.g. for 3 + 1 + 1 contract, the rate would be fixed for 5 years). It should be noted, that if 20 or more active members are involved in the outsourcing, the Fund will instruct the Actuary to calculate a bespoke contribution rate. Before preparing a bid, this **must** be requested from the Fund.

Employee contributions, as defined in the Regulations, are due in addition to the employer contributions shown.

Indemnity Requirements

The Regulations require the winning bidder to indemnify the Fund against pension risks, where an assessment is such as to require it. Further, the Regulations limit the form of any indemnity to the following:

- a) A traditional bond taken out with a bank or insurer;
- b) Putting in place a contingent asset (such as property); or
- c) With the agreement of the Administering Authority, the winning bidder may secure a guarantee, in a form approved by the Administering Authority.

As outlined above, under the Council's pass through policy, the Council will retain the key pension risks associated with the outsourcing. Therefore, in the majority of cases, the Awarding Authority will provide the required indemnity through a guarantee (e.g. (c) above) and the winning bidder will not need to source their own indemnity.

However, it should be noted that if 20 or more active members are involved in the outsourcing, the Fund will instruct the Actuary to calculate the potential redundancy costs which may be incurred should the winning bidder enter insolvency. The winning bidder will be required to maintain an indemnity (in one of the forms outlined above) for the duration of their contractual relationship with the Council. The Council may waive this requirement. Before preparing a bid, this information should be requested from the Fund.

Exit and other additional pension costs

The Council will retain the key pension risks associated with the outsourcing by adopting a "pass through" arrangement. In particular, this means that no LGPS assets or liabilities are transferred to the winning bidder and any pension surplus or deficit generated during the contract is retained by the Council. In normal circumstances, the winning bidder 'walks away' from the Fund on exit without paying any deficit or receiving any surplus.

However, in some circumstances the winning bidder will be liable for additional pension costs that arise due to items over which it exerts full control. These include:

- early retirement strain costs where staff are retired on efficiency or redundancy grounds;
- award of enhanced benefits (e.g. additional pensions, waiving actuarial reductions on voluntary early retirements etc.); e.g.
- excessive pay increases (pay increases in excess of those assumed in the most recent formal valuation of the Fund); and
- award of ill health early retirement and the related funding costs. ¹

Full details are set out in the Admission Agreement.

¹ Unless the ill health early retirement is approved by the Fund's occupational health physician

Appendix 2

Admission Agreement

Dated

2023

- (1) The Mayor And Burgesses of The London Borough of Lewisham
- (2) [Scheme Employer]
- (3) [Contractor]

Admission Agreement relating to []

“Contract” means the agreement entered into by the Scheme Employer and the Admission Body dated [], together (with the written consent of the Authority) with any extension, renewal or replacement of that contract which is in force beyond the expiry date of the original contract, provided that it is made between the same parties and relates to the same or substantially the same services.

“Eligible Employees” means employees employed by the Admission Body in connection with the Services who were transferred to the Admission Body in accordance with the Contract and are listed in the Schedule of this Agreement, provided that:

- (a) the employee is and remains employed by the Admission Body in connection with the provision of the Services;
- (b) the employee is not a member of another occupational pension scheme (within the meaning of Section 1 of the Pension Schemes Act 1993) in relation to that employment; and
- (c) the employee otherwise satisfies the requirements of the Regulations relating to eligibility for and membership of the Scheme.

“Funding Strategy Statement” or “FSS” means the Authority’s funding strategy which identifies how employers’ pension liabilities are best met in future years.

“Pension Fund” means the London Borough of Lewisham Pension Fund.

“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 (SI 2013/2356) as amended from time to time, or any subsequent replacement regulations.

“Services” means the provision of catering services.

“Termination Date” means the date prescribed in Clause 8.1 .

“Transfer Date” means the Commencement Date or the Eligible Employees’ actual transfer date if later.

1.2 Save as aforesaid the words and expressions used in this Agreement shall have the same respective meanings as in the Regulations unless the context otherwise requires.

1.3 In this Agreement where the context so admits:

- 1.3.1 words denoting the singular shall include the plural and vice versa, words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include corporations, unincorporated associations, and partnerships;
- 1.3.2 reference to any statutory provisions shall be deemed to include reference to any such provisions as from time to time amended varied replaced extended or re-enacted and any subordinate legislation or regulations for the time being in force made under it, unless the context otherwise requires;
- 1.3.3 reference to clauses or schedules shall be deemed to be references to a clause or a schedule to this agreement and references to a sub-clause shall be deemed to be a reference to a sub-clause of the clause in which the reference appears; and
- 1.3.4 headings are included for ease of reference only and shall not affect this agreement or its interpretation.

2 Commencement Date

The Admission Body shall participate in the Pension Fund in respect of the Eligible Employees with effect from the Commencement Date. 4.6 The Admission Body shall be liable for and shall indemnify the Pension Fund against any failure on the part of the Admission Body to comply with its obligations under this Agreement, the Regulations, or any regulatory requirements applicable to the Pension Fund.

3 Admission

- 3.1 The Authority shall as from the Commencement Date permit the Eligible Employees to elect to be members of the Scheme and to participate as active members of the Pension Fund with effect from the Transfer Date. From the Commencement Date the Admission Body shall operate as if it were a Scheme Employer for the purposes of the Regulations and shall exercise the responsibilities required as such in the Regulations.
- 3.2 This is to be a closed admission agreement.

4. Participation

- 4.1 The provisions of the Regulations shall apply for determining the rights and obligations of and the action which is to be taken by each

party to this Agreement and for the transmission of information between them and each party hereby undertakes with the other to take such action promptly as is required to comply with the Regulations.

- 4.2 The provisions of the Regulations shall apply to the Eligible Employees in the same way as if the Admission Body were a scheme employer within the meaning of the Regulations.
- 4.3 The Admission Body warrants and represents to the Authority that every Eligible Employee is employed as defined for the purposes of this Agreement.
- 4.4 The Admission Body undertakes that it will promptly notify the Authority in writing if any Eligible Employee ceases to be eligible to be an active member of the Scheme.
- 4.5 The Admission Body warrants and represents to the Authority that no further employees employed by the Admission Body will after the Commencement Date become Eligible Employees for the purposes of this Agreement.
- 4.6 The Admission Body shall be liable for and shall indemnify the Pension Fund against any failure on the part of the Admission Body to comply with its obligations under this Agreement, the Regulations, or any regulatory requirements applicable to the Pension Fund.

5. Payments

Subject to the provisions of Clause 11 (Pass-through Provisions) the Admission Body shall meet the obligations set out in this clause.

- 5.1 The Admission Body shall meet all costs covered in the charging policy set out in the Pension Fund's Funding Strategy Statement. This includes any actuarial costs which have been or may have been incurred by the Authority in connection with the Admission Body gaining admitted body status in the Pension Fund.
- 5.2 With effect on and from the Commencement Date and during the period of this Agreement, the Admission Body retains responsibility for funding the benefits of the Eligible Employees, including any funding deficit on termination of this agreement.
- 5.3 The employer pension contribution rate will be the rate certified in the rates and adjustments certificates prepared, from time to time, by the actuary appointed by the Authority, for the purposes of Regulation 62 of the Regulations (Actuarial valuations of pension

funds) and Regulation 64 of the Regulations (Special circumstances where revised actuarial valuations and certificates must be obtained) (if applicable).

- 5.4 The Admission Body shall pay the following contributions to the Pension Fund:-
- 5.4.1 the employer contributions as required by Clause 5.3;
 - 5.4.2 all amounts from time to time deducted from the pay of the Members under the Regulations. These will be payable monthly in arrears to the Pension Fund by no later than the date specified by the Authority and in any event no later than the time required under section 49(8) of the Pensions Act 1995; and
 - 5.4.3 otherwise as required by the Regulations or the Funding Strategy Statement.
- 5.5 The Admission Body shall pay to the Authority for credit to the Pension Fund any revised contributions due under sub-clause 7.2.2 within 30 days of a written request from the Authority.
- 5.6 The Admission Body shall be required to pay to the Authority any further payments as may be required pursuant to Regulation 31 of the Regulations (Award of additional pension) and Regulation 68 of the Regulations (Employer's further payments) or otherwise under the Regulations.
- 5.7 If any additional costs arise and are payable by the Admission Body pursuant to Regulation 70 of the Regulations (Additional costs arising from Scheme employer's level of performance), the Administering Authority or the Pension Fund shall be reimbursed by the Admission Body.
- 5.8 Where the Admission Body certifies that:
- 5.8.1 an Eligible Employee who is aged 55 or more is retiring by reason of redundancy or in the interest of efficiency; or
 - 5.8.2 an Eligible Employee is retiring voluntarily on or after age 55 and before age 60 and the Admission Body exercises its discretions to activate rule of 85 protections; or
 - 5.8.3 an Eligible Employee is retiring on the grounds of permanent ill health or permanent infirmity of mind or body; or

- 5.8.4 the deferred benefit of an Eligible Employee is brought into payment on or after age 55 and before age 60 and the Admission Body exercises its discretions to activate rule of 85 protections; or
- 5.8.5 the deferred benefit of an Eligible Employee is brought into payment on the grounds of permanent ill health or permanent infirmity of mind or body; or
- 5.8.6 the Admission Body has exercised a discretion under the Regulations,

and immediate benefits are payable under the Regulations, the Admission Body shall pay to the Authority for credit to the Pension Fund the sum notified to them in writing by the Authority as representing the actuarial strain on the Pension Fund as certified by an actuary appointed by the Authority, of the immediate payment of benefits.

- 5.9 Any financial penalty incurred by the Authority arising from the failure of the Admission Body to comply with the terms of this Agreement or the requirements of the Regulations shall be repaid to the Pension Fund by the Admission Body within 30 days of receiving a written request from the Authority.
- 5.10 If any sum payable under the Regulations or this Agreement by the Admission Body to the Authority or to the Pension Fund remains unpaid at the end of one month after the date on which it becomes due under this Agreement or the Regulations the Authority shall require the Admission Body to pay interest calculated in accordance with the Regulations on the amount remaining unpaid
- 5.11 If any sum payable under the Regulations or this Agreement by the Admission Body to the Authority or to the Pension Fund has not been paid by the date on which it becomes due under this Agreement or the Regulations the Authority may set off against any payments due to the Admission Body an amount equal to the sum due from the Admission Body under this Agreement or the Regulations (including any interest due in accordance with Clause 5.8) and pay the sum to the Pension Fund.

6. Admission Body's Undertakings

The Admission Body undertakes as set out below:

- 6.1 to provide or procure to be provided such information relating to the Admission Body's participation in the Pension Fund and the Eligible

Employee's participation in the Scheme as is reasonably required by the Authority;

- 6.2 to comply with the reasonable requests of the Authority to enable it to comply with the requirements of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S1 2013 / 2734), or replacement provisions;
- 6.3 to adopt the practices and procedures relating to the operation of the scheme set out in the Regulations, subject to clause 6.4, and in any employer's guide or administration strategy published by the Authority and provided by the Authority to the Admission Body;
- 6.4 to notify the Authority immediately of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion; if no notification is provided the Authority will assume that the Admission Body will follow the same position as is taken by the Authority;
- 6.5 without prejudice to the requirements of the Regulations and any employer's guide or administration strategy published by the Authority and provided to the Admission Body, to notify forthwith the Authority in writing of any material change in the terms and conditions of employment of any of the Eligible Employees which affects or is likely to affect entitlement to benefits under the Pension Fund for its employees who are members of the Pension Fund (an example being a significant increase in pay) and of any termination of employment by virtue of redundancy or in the interests of efficiency or for any other reason;
- 6.6 not to do any act, omission or thing which would prejudice the status of the Pension Fund as a Registered Pension Scheme;
- 6.7 to notify the Authority and the Scheme Employer immediately of any matter which may affect, or is likely to affect, its participation in the Pension Fund and give immediate notice to the Authority of any actual or proposed change in its status which may give rise to a termination of the Agreement and/or Contract including but not limited to take-over, reconstruction or amalgamation, liquidation or receivership and a change in the nature of its business or constitution;
- 6.8 subject to Clause 11, to provide, maintain, renew and/or adjust (as applicable) an indemnity or bond in accordance with Clause 9 unless notified by the Authority that this is not required;
- 6.9 to give two months' prior notice to the Administering Authority and the Scheme Employer in the event of any future transfer of any of the

Eligible Employees to a sub-contractor or separate organisation for the delivery of the Services or assets provided for in the Contract; and

6.10 to notify the Authority of any extension of the Contract beyond the initial term.

7. Periodic Valuations

7.1 Subject to Clause 11, the Authority may periodically obtain from an actuary a certificate specifying, in the case of the Admission Body, the percentage or amount by which, in the actuary's opinion, the employer's contributions should be increased or reduced (which contributions are payable under Clause 5 above). This is with a view to ensuring that, as far as is reasonably possible, the value of assets of the Pension Fund in respect of Eligible Employees and former Eligible Employees under this Agreement is neither materially more or materially less than the anticipated liabilities of the Pension Fund in respect of the said Eligible Employees at the date the Contract or this Agreement is due to end.

7.2 Subject to Clause 11, when this Agreement is terminated the Authority must obtain:-

7.2.1 an actuarial valuation from the actuary as at the effective date of termination, of the liabilities to the Pension Fund in respect of those members covered by this Agreement (including, for the avoidance of doubt, current or former employees of the Admission Body), and

7.2.2 a revision of any rates and adjustments certificate within the meaning of the Regulations showing the revised contributions due from or exit credit payable to the Admission Body, in accordance with regulation 64(2) of the Regulations. This calculation would be based on achieving a 100% funding level in line with the Funding Strategy Statement.

8. Termination

8.1 Subject to Clause 8.2 and Clause 8.3, this Agreement shall terminate on the earlier of the Termination Date (as determined by Clause 8.2 and Clause 8.3) or at the end of the notice period on any of the parties hereto giving a minimum of three months' notice to terminate this Agreement to the other party.

8.2 This Agreement shall automatically terminate on the Termination Date which shall be the earlier of the date of:

- 8.2.1 the date of expiry or earlier termination of the Contract;
 - 8.2.2 the date the Admission Body ceases to employ any Eligible Employee; or
 - 8.2.3 the date the Admission Body otherwise ceases to be an admission body for the purposes of the Regulations.
- 8.3 This Agreement may be terminated with immediate effect (which shall then be the Termination Date) by the Authority by giving notice in writing to the Admission Body in the event of:
- 8.3.1 the insolvency, winding up or liquidation of the Admission Body;
 - 8.3.2 a material breach by the Admission Body of any of its obligations under this Agreement or the Regulations. However, if the breach can be remedied the Authority shall allow the Admission Body the opportunity to do so on such terms as the Authority reasonably decides;
 - 8.3.3 the failure by the Admission Body to pay any sums due to the Authority or to the Pension Fund within one month of the periods specified in Clause 5.1, Clause 5.3, Clause 5.5, Clause 5.6, Clause 5.7, Clause 5.8 and Clause 7.2.2 or, in any other case, within one month of receipt of a notice from the Authority requiring it to do so; or
 - 8.3.4 the failure by the Admission Body to obtain or alter an indemnity or bond in accordance with Clause 9.

9 Indemnity / Bond or Guarantor from Admission Body

- 9.1 The Authority has agreed that the initial level of risk exposure is not such as to require a bond, indemnity or guarantee as the pass-through provisions set out in Clause 11 have been agreed between the parties. The provisions of this Clause will apply in the event that the pass-through arrangement as set out in Clause 11 is removed.
- 9.2 The Admission Body warrants that where the level of risk referred to in Clause 9.1 requires that risk to be covered by a bond or indemnity, such bond or indemnity (in a form approved by the Authority) should be put in place.
- 9.3 In the event of such a bond being put in place, the Admission Body shall, to the satisfaction of the Authority keep under assessment the level of risk arising on premature termination of the provision of service or assets by reason of insolvency, winding up or liquidation of the Admission Body at no less than annual intervals (or such greater period that the Authority shall agree with the Admission Body).

Following such review, where the risk requires it and within 30 days of notification by the Authority, the Admission Body shall:

9.3.1 arrange for the existing bond to be renewed and amended to cover the revised amount of assessed risk; or

9.3.2 secure a new bond to cover the revised amount of the assessed risk.

10 Indemnity

10.1 The Admission Body undertakes to indemnify and keep indemnified the Authority against any costs and liabilities which it or the Pension Fund may incur (whether directly or as a result of a loss or cost to the Eligible Employees) arising out of or in connection with:

10.1.1 the non-payment by the Admission Body of any contributions or payments due to the Pension Fund under this Agreement or the Regulations; or

10.1.2 any breach by the Admission Body of this Agreement, the Regulations or any other legal or regulatory requirements applicable to the Pension Fund.

10.2 Any demand under Clause 10.1 must be paid by the Admission Body to the Authority or to the Pension Fund (as applicable) within [10] Business Days of receipt by the Admission Body of such demand. In the event of non-payment by the Admission Body, the Scheme Employer must indemnify and keep indemnified the Authority against such costs and liabilities.

11 Pass-Through Provisions

11.1 The parties have agreed that a pass-through arrangement will apply to this Agreement. Consequently, unless and until the provisions of this clause cease to apply in accordance with Clause 11.6, this Agreement will apply with the modifications set out in this Clause.

11.2 The following provision will apply in place of Clause 5.3:

“As at the Commencement Date the employer pension contribution rate will be [], such rate to be fixed until the end of the Contract.

11.3 The modifications made to Clause 5.3 by this Clause do not affect any other provision of Clause 5 or the requirements of the Regulations.

11.4 The following provision will apply in place of Clause 7.2:

“Where this Agreement terminates in accordance with this Clause 8 or the Admission Body no longer employs an active member contributing to the Pension Fund (so that regulation 64(1) of the Regulations applies), the parties agree that, subject to any outstanding requirements to make payments under Clauses 5.3, and 5.6 to 5.11, the assets and liabilities of the Admission Body under the Agreement shall be subsumed within the Pension Fund by the Scheme Employer so that no exit payment will be due from, and no exit credit will be payable to, the Admission Body. Instead the Authority will obtain a further revision of the Scheme Employer’s rates and adjustments certificate showing the revised contributions (if any) from the Scheme Employer in respect of such assets and liabilities, and the Scheme Employer will correspondingly be entitled to benefit from any surplus within the Fund relating to those assets and liabilities.”

11.5 If the Authority considers that ending the application of this Clause 11 is in the interests of the Pension Fund and the other scheme employers participating in it or is necessary to comply with the Regulations, the Authority may give notice to the Admission Body and the Scheme Employer confirming that this Clause 11 will cease to apply on and from such date as is specified in the notice.

11.6 Where this Clause 11 ceases to apply prior to the date on which this Agreement terminates under Clause 8:

11.6.1 the other provisions of this Agreement will thereafter apply without modification in accordance with their terms;

11.6.2 any further payments due from the Admission Body under its rates and adjustments certificate issued in respect of this Agreement will be calculated on the assumption that any liabilities relating to the membership of the Eligible Employees in the Pension Fund prior to the date on which this Clause 11 ceases to apply (the “Cessation Date”) are 100% funded as at the Cessation Date, as determined by the actuary appointed by the Pension Fund in accordance with actuarial assumptions which are consistent with the most recent actuarial valuation of the Pension Fund and with the Funding Strategy Statement in place before the Cessation Date (updated to the Cessation Date as necessary in the opinion of the actuary). 100% funded means that the Admission Body’s notional allocation of assets within the Fund as at the Cessation Date will be equal to the value placed on the liabilities as at the Cessation Date (as determined by the actuary), with any deficit being met from the Scheme Employer’s notional allocation of assets within the

Pension Fund and, if relevant, any surplus being credited to the Scheme Employer; and

11.6.3 the level of risk exposure for the purposes of Clause 9 shall be re-assessed by the Admission Body to the satisfaction of the Authority and an appropriate bond shall be put in place, as required under Clause 9.

12 Amendment

The parties to this Agreement may amend this Agreement by deed provided that the amendment is not such that it would breach the Regulations or any other legal or regulatory requirements applicable to the Pension Fund.

13 Notices

Any notice to be given under this Agreement shall be in writing and shall be deemed to be sufficiently served if delivered by hand or sent by prepaid first class post to the registered office of the Admission Body or the Authority or the office of the Secretary of State (as the case may be) and shall be deemed to have been duly given or made (i) if delivered by hand, upon delivery at the address provided for in this Agreement unless such delivery occurs on a day which is not a Business Day or after 4 p.m. on a Business Day, in which case it will be deemed to have been given at 9 a.m. on the next Business Day; or (ii) if sent by prepaid first class post, on the second Business Day after the date of posting.

14 Public Inspection

This Agreement shall be made available for public inspection by the Scheme Employer at its address.

15 Dispute

Any question which may arise between the parties to this Agreement relating to its construction or to the rights and obligations under the Agreement, any dispute shall be referred in writing to an independent legal adviser for determination.

16 Applicable Law

This Agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

17 Rights of Third Parties

The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of third Parties) Act 1999 by any person not a party to it.

18 Severance

- 18.1 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.
- 18.2 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.

DRAFT

**SCHEDULE
ELIGIBLE EMPLOYEES**

NAMES	N.I. NUMBERS

DRAFT