

MINISTRY OF JUSTICE
COMMUNITY REHABILITATION COMPANIES
GUIDANCE

on the obligations of CRCs and their subcontractors in
relation to the Local Government Pension Scheme and
arranging the Pensions Guarantee to be provided by
Secretary of State for Justice

November 2016

Government Legal Department

at the

Ministry of Justice 102 Petty France London SW1H 9AJ

CONTENTS PAGE

Section A

Guidance	3
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Section B

Explanatory notes to the Guidance	5
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Schedules

1. Contractor's Certificate	9
2. Contractor's Annual Update Certificate	11
3. Industry Standard Partnering Agreement: Pensions	Error! Bookmark not defined.
4. SSJ Pensions Guarantee	Error! Bookmark not defined.
5. LGPS Admission Agreement	Error! Bookmark not defined.

SECTION A

GUIDANCE:

PENSIONS OBLIGATIONS FOR SUBCONTRACTORS AND ARRANGING THE SECRETARY OF STATE FOR JUSTICE'S PENSIONS GUARANTEE

1. When does this guidance apply to Subcontractors?

- 1.1 This guidance applies on a sub-contracting of the Services which were originally subject to a contract between the Secretary of State for Justice (**the Authority**) and a Community Rehabilitation Company (the **Contractor**) and there is a mandatory TUPE transfer (or a staff transfer under a staff transfer scheme made pursuant to schedule 2, paragraph 5 of the Offender Management Act 2007) of "Eligible Employees" from the Contractor to a Subcontractor.
- 1.2 Please refer to the Explanatory Notes in Section B for who is an **Eligible Employee**.
- 1.3 On a sub-contracting of the Services, Eligible Employees will be entitled to continued membership in the LGPS whilst they are wholly or mainly engaged in the provision of probation services, and this will need to be provided by the Subcontractor
- 1.4 The steps set out in paragraph 2 below shall be followed to allow the Eligible Employees to continue accruing benefits under the Local Government Pension Scheme (**LGPS**) whilst employed by the Subcontractor, for so long as they are engaged in performing the Services.

2. Actions required in respect of Eligible Employees on the subcontracting of probation services

- 2.1 The Contractor who is subcontracting some or all of the Services shall ensure that the following steps are taken in relation to the Eligible Employees transferring:
 - (a) The Contractor obtains the necessary consent from the Authority to subcontract the Services and informs in writing the Authority's Contract Manager of the intention to subcontract. The Contract Manager shall provide a copy of this Guidance Note to the Contractor and the subcontractor who shall inform the Administering Authority of the Greater Manchester Pension Fund (**GMPF**), Tameside Metropolitan Borough Council, of the intention to subcontract services if Eligible Employees are to be compulsorily transferred from the Contractor to the Subcontractor. Application information and forms for CRC subcontractors are available from www.gmpf.org.uk for the subcontractor to provide the details required by GMPF to progress part (c) below. GMPF may also provide copies of this Guidance Note to the parties concerned where this is convenient.
 - (b) The Contractor and Subcontractor to enter into a subcontract subject to GMPF obtaining the necessary approval in paragraph (c) below. The subcontractor shall include provisions equivalent to those in paragraphs 2 (and explicitly 2.1, 2.2, 2.8, 2.9, 2.10 and 2.11), 4.1 and 4.5 of the *Industry Standard Partnering Agreement: Pensions* contained in the Contract between the Contractor and the Authority, and attached at **Error! Reference source not found.** to this Guidance Note;
 - (c) The GMPF to request approval from the Department of Communities and Local Government (**DCLG**) to enter into an admission agreement with the Subcontractor in accordance with paragraph 1(e) of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013;

- (d) The Subcontractor to enter into an LGPS admission agreement with the GMPF in respect of the Eligible Employees in the form attached at **Error! Reference source not found.** to this Guidance Note. GMPF will draft the admission agreement, arrange for it to be executed by the parties and submitted to the Authority for sealing;
- (e) The Contractor to issue a certificate to the Authority with a copy to GMPF providing a number of confirmations in respect of the Subcontractor and the Eligible Employees, in the form attached at Schedule 1 to this Guidance Note. The certificate for the Authority should be sent to the National Offender Management Service Financial Accountant at the Ministry of Justice 102 Petty France, London, SW1H 9AJ;
- (f) The Secretary of State for Justice being satisfied the steps in this section have been followed will provide a guarantee in favour of the GMPF, guaranteeing the Subcontractor's obligations to the LGPS in relation to the Eligible Employees. GMPF shall draft the guarantee following the form attached at Schedule 4 to this Guidance Note. The corporate seal of the Secretary of State shall be affixed to the guarantee and this will be authorised on the recommendation of the National Offender Management Service Financial Accountant;
- (g) The Contractor shall provide an Annual Update Certificate to the Authority and a copy to GMPF within 30 days of the annual anniversary of the issue of the Guarantee confirming that the Eligible Employees who transferred to the Subcontractor continue to be wholly or mainly engaged in the provision of probation services, in the form attached at Schedule 2 to this Guidance Note.

3. Explanatory Notes

- 3.1 Please refer to the Explanatory Notes in Section B for more information on, and background to, the obligations set out in this Guidance.
- 3.2 All capitalised terms shall have the meanings given to them in the Explanatory Notes in Section B.

SECTION B

EXPLANATORY NOTES TO THE GUIDANCE

1. Who are the eligible employees?

1.1 “Eligible Employee” for the purpose of this Guidance Note is an employee who:

- (a) is an active member of (or eligible to join) the LGPS and currently engaged in the provision of probation services in the employment of the CRC and who was:
 - (i) wholly or mainly engaged in the provision of probation services immediately before 1 June 2014 and whose employment transferred from the Authority or other body engaged in the provision of probation services to a Community Rehabilitation Company (CRC) pursuant to a TUPE transfer or a staff transfer scheme before 1 February 2015; or
 - (ii) employed by a CRC and engaged wholly or mainly in the provision of probation services before 1 February 2015; or
 - (iii) wholly or mainly engaged in the provision of probation services immediately before 1 February 2015 and whose employment transferred from the Authority or another person engaged by the Authority to provide probation services to a CRC, on a voluntary basis, within one calendar year from 1 February 2015;
- (b) is compulsorily transferred from the Contractor to a Subcontractor as part of a TUPE transfer (or a staff transfer under a staff transfer scheme made pursuant to schedule 2, paragraph 5 of the Offender Management Act 2007) on the subcontracting of all or a part of the Services;
- (c) has been wholly or mainly engaged in the provision of probation services by the Contractor; and
- (d) will continue to be wholly or mainly engaged in the provision of probation services following the transfer of his/her employment to the Subcontractor.

1.2 Eligible Employees are entitled to continued membership in the LGPS whilst they are wholly or mainly engaged in the provision of probation services, and this will need to be provided by the Subcontractor.

2. What does ‘wholly or mainly engaged in the provision of probation services’ mean?

2.1 Wholly or mainly engaged in the provision of probation services means the employee works on the Services (as defined in the Services Agreement with the Contractor) for more than 50% of their time on average. The Contractor should be required to certify this in the Contractor’s certificate (see below).

3. The Contractor’s obligations

3.1 The Contractor is obliged under the terms of the Services Agreement with the Authority to procure that a Subcontractor enters into an agreement containing provisions equivalent to those under Schedule 22 of the Services Agreement, specifically paragraphs 2 (in particular 2.1, 2.2, 2.8, 2.9, 2.10 and 2.11) and 4.1 and 4.5. This includes an obligation to use reasonable endeavours to ensure that any Subcontractor enters into an admission agreement with the GMPF in respect of any Eligible

Employees for the duration of any subcontract (or until the Subcontractor ceases to employ any Eligible Employees, if earlier).

4. Subcontractor's obligations

- 4.1 Under the terms of the subcontract, the Subcontractor should be obliged to provide Eligible Employees with continued membership of the LGPS. The subcontract should include terms equivalent to those in paragraphs 2 (in particular 2.1, 2.2, 2.8, 2.9, 2.10 and 2.11), 4.1 and 4.5 of the schedule attached at **Error! Reference source not found.** to this Guidance Note, requiring the Subcontractor to enter into an admission agreement with the GMPF in respect of any Eligible Employees for the duration of any subcontract (or until the Subcontractor ceases to employ any Eligible Employees, if earlier).
- 4.2 The Subcontractor will only be required to provide continued membership of the LGPS to Eligible Employees. Employees will cease to be Eligible Employees if they stop being wholly or mainly engaged in the provision of probation services, or if they voluntarily leave employment. If either of these events occurs then the Subcontractor will no longer be required to provide access to the LGPS for such members; membership under the terms of the admission agreement will cease on the day the employee ceases to be an Eligible Employee. However the Subcontractor will continue to be liable for the past service liabilities in respect of such employees for the duration of the Subcontract or the LGPS admission agreement (whichever ends first) in respect of such employees.

5. The subcontract

- 5.1 The Industry Standard Partnering Agreement (**ISPA**) is a model form of subcontract designed to facilitate the provision of services from various subcontractors. The ISPA and the linked Explanatory Guide applies to subcontractors registered with the Authority as part of the Tier II and Tier III Registration process published by the Authority on 19th September, 2013 (each a **Registered Provider**). However a Contractor can also use the ISPA with other subcontractors, who are not Registered Providers.
- 5.2 A pensions schedule is included in the ISPA Explanatory Guide and the form is attached at **Error! Reference source not found.** to this Guidance Note. The Contractor should consider using this schedule as a base for the pension provisions in the subcontract, whether or not it uses the whole of the ISPA, as this will satisfy (and mirrors) the Contractor's obligations under Schedule 22 of the Services Agreement.

6. SSJ Pensions Guarantee

- 6.1 It is essential that the Contractors/subcontractors employing Eligible Employees are covered by a guarantee to GMPF from the Secretary of State for Justice (the **SSJ Guarantee**) in respect of scheme liabilities for Eligible Employees, In order to obtain the SSJ Guarantee the Contractor shall issue a certificate to the Authority with a copy to GMPF in the form attached at Schedule 1 to this Guidance Note (see also paragraph 7 of Section B below). The Authority, the GMPF and the Subcontractor will then enter into a guarantee in favour of the GMPF in the form attached at **Error! Reference source not found.** to this Guidance Note. The SSJ Guarantee will cover all past service liabilities in respect of the Eligible Employees employed by the Subcontractor and any liabilities Eligible Employees accrue while employed by the Subcontractor. The SSJ Guarantee will not cover any liabilities Eligible Employees accrue in the LGPS once they cease to be employed by the Subcontractor or cease to satisfy the eligibility requirements; the main eligibility requirement being that the employee continues to be 'wholly or mainly engaged in the provision of probation services'. However the SSJ Guarantee will continue to cover the past service liabilities of such employees for the duration of the Subcontract or the Subcontractor's LGPS admission agreement (whichever ends first)

6.2 It is important to note that the SSJ Pensions Guarantee can only cover liabilities accrued by Eligible Employees whilst they are engaged in the provision of the probation services, which were the subject of the Transforming Rehabilitation competitive tender process (including the past service liabilities associated with those Eligible Employees). Always check that an employee falls within the definition of Eligible Employee.

7. The Contractor's Certificate

7.1 If the Contractor wishes to subcontract some or all of the probation services and this will involve a compulsory transfer of Eligible Employees, then the Contractor should be asked to provide a certificate to the Authority with a copy to GMPF confirming the following:

- (a) that "Eligible Employees" are being transferred to the Subcontractor (see paragraph 1.1 above for the definition of Eligible Employee) by way of a TUPE transfer (or under a staff transfer scheme made pursuant to schedule 2, paragraph 5 of the Offender Management Act 2007);
- (b) that the Eligible Employees have been wholly and mainly engaged in the provision of probation services continuously while employed by the Contractor;
- (c) having made appropriate enquiries of the Subcontractor, that the Eligible Employees will continue to be wholly or mainly engaged in the provision of probation services following the transfer to the Subcontractor;
- (d) that the Subcontractor has contractually agreed to:
 - (i) enter into an admission agreement with the GMPF in respect of the participation of the transferring Eligible Employees in the LGPS for the duration of the subcontract (or until the Subcontractor ceases to employ the Eligible Employees, if earlier), and the Eligible Employees will be listed in the schedule to that admission agreement;
 - (ii) comply with the provisions of the admission agreement with the GMPF in all respects and for so long as it employs Eligible Employees;
 - (iii) indemnify the Authority and the Contractor and any future service provider, and in each case their subcontractors, from and against all losses suffered or incurred by it or them which arise from any breach by the Subcontractor of the terms of the Subcontractor's admission agreement;
 - (iv) indemnify the Authority and the Contractor and any future service provider, and in each case their subcontractors, from and against all losses suffered or incurred by it or them which arise from claims by Eligible Employees of the subcontractor and/or of any onward subcontractor, or by any trade unions, elected employee representatives or staff associations, in respect of all or any such Eligible Employees in respect of the acts or omissions of the Subcontractor relating to pension rights in respect of periods of employment on and after the employees transfer date and on or before the date of termination or expiry of the subcontract;
- (e) the Contractor has entered into a contract with the Subcontractor in accordance with paragraph 4.5 of Schedule 22 of the Services Agreement (i.e. one including provisions

equivalent to those in paragraphs 2 (in particular 2.1, 2.2, 2.8, 2.9, 2.10 and 2.11), 4.1 and 4.5); and

- (f) The SSJ Guarantee will cover all past service liabilities in respect of the Eligible Employees employed by the Subcontractor and any liabilities Eligible Employees accrue while employed by the Subcontractor. The SSJ Guarantee will not cover any liabilities Eligible Employees accrue in the LGPS once they cease to be employed by the Subcontractor or cease to satisfy the eligibility requirements; the main eligibility requirement being that the employee continues to be ‘wholly or mainly engaged in the provision of probation services’

7.2 The form of the certificate to be used is attached at Schedule 1.

7.3 The certificate for the Authority should be addressed to the National Offender Management Service Financial Accountant at the Ministry of Justice 102 Petty France, London, SW1H 9AJ.

7.4 The Contractor shall provide an Annual Update Certificate in the form attached at Schedule 2 to this Guidance Note to the Authority with a copy to GMPF within 30 days of the anniversary of the issue of the Guarantee confirming that the Eligible Employees transferred to the Subcontractor under the subcontract continue to be wholly or mainly engaged in the provision of probation services.

8. What documentation does the Subcontractor need to enter into?

8.1 In summary, the Subcontractor needs to enter into the following documents:

- (a) a subcontract with the Contractor including provisions equivalent to those in paragraphs 2 (in particular 2.1, 2.2, 2.8, 2.9, 2.10 and 2.11), 4.1 and 4.5 of the schedule attached at **Error! Reference source not found.** to this Guidance Note;
- (b) an LGPS admission agreement with the GMPF in the form attached at **Error! Reference source not found.** to this Guidance Note; and
- (c) a guarantee provided by the Secretary of State for Justice in the form attached at **Error! Reference source not found.** to this Guidance Note.

SCHEDULE 1

CONTRACTOR'S CERTIFICATE

To: the Secretary of State for Justice (“the Authority”)

Copy to: Tameside Metropolitan Borough Council, Administering Authority for the Greater Manchester Pension Fund (“the Administering Authority”)

I, [STATE NAME], [STATE POSITION] of [STATE NAME OF CONTRACTOR] (the **Contractor**) confirm that:

- 1) “Eligible Employees”¹ are being transferred to [STATE NAME OF SUBCONTRACTOR] (the **Subcontractor**) by way of a TUPE transfer (or a staff transfer under a staff transfer scheme made pursuant to schedule 2, paragraph 5 of the Offender Management Act 2007).
- 2) the Eligible Employees have been wholly and mainly engaged in the provision of probation services continuously while employed by the Contractor;
- 3) having made appropriate enquiries of the Subcontractor, the Eligible Employees will continue to be wholly or mainly engaged in the provision of probation services following the transfer of their employments to the Subcontractor;

¹ An “**Eligible Employee**” for the purpose of this Certificate is an employee who:

(a) is an active member of (or eligible to join) the LGPS and currently engaged in the provision of probation services in the employment of the CRC and who was:

(i) wholly or mainly engaged in the provision of probation services immediately before 1 June 2014 and whose employment transferred from the Authority or other body engaged in the provision of probation services to a Community Rehabilitation Company (CRC) pursuant to a TUPE transfer or a staff transfer scheme before 1 February 2015; or

(ii) employed by a CRC and engaged wholly or mainly in the provision of probation services before 1 February 2015; or

(iii) wholly or mainly engaged in the provision of probation services immediately before 1 February 2015 and whose employment transferred from the Authority or another person engaged by the Authority to provide probation services to a CRC, on a voluntary basis, within one calendar year from 1 February 2015;

(b) is compulsorily transferred from the Contractor to a Subcontractor as part of a TUPE transfer (or a staff transfer under a staff transfer scheme made pursuant to schedule 2, paragraph 5 of the Offender Management Act 2007) on the subcontracting of all or a part of the Services;

(c) has been wholly or mainly engaged in the provision of probation services by the Contractor; and

(d) will continue to be wholly or mainly engaged in the provision of probation services following the transfer of his/her employment to the Subcontractor.

- 4) the Subcontractor has agreed to:
- (i) enter into an admission agreement with the Administering Authority in respect of the participation of the transferring Eligible Employees in the Local Government Pension Scheme (LGPS) for the duration of the subcontract (or until the Subcontractor ceases to employ the Eligible Employees if earlier) and the Eligible Employees, will be listed in the schedule to that admission agreement;
 - (ii) comply with the provisions of the admission agreement with the GMPF in all respects and for so long as it employs Eligible Employees;
 - (iii) indemnify the Authority and the Contractor and any future service provider (and in each case their subcontractors), from and against all losses suffered or incurred by it or them which arise from any breach by the Subcontractor of the terms of the Subcontractor's admission agreement;
 - (iv) indemnify the Authority and the Contractor and any future service provider (and in each case their subcontractors), from and against all losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Subcontractor and/or of any onward subcontractor, or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees, which losses arise out of the acts or omissions of the Subcontractor and relate to pension rights in respect of periods of employment on and after the employee transfer date and on or before the date of termination or expiry of the subcontract;
- 5) the Contractor has entered into a contract with the Subcontractor in accordance with paragraph 4.5 of Schedule 22 of the Services Agreement (i.e. one including provisions equivalent to those in paragraphs 2 (in particular 2.1, 2.2, 2.8, 2.9, 2.10 and 2.11), 4.1 and 4.5); and
- 6) The SSJ Guarantee will cover all past service liabilities in respect of the Eligible Employees employed by the Subcontractor and any liabilities Eligible Employees accrue while employed by the Subcontractor. The SSJ Guarantee will not cover any liabilities Eligible Employees accrue in the LGPS once they cease to be employed by the Subcontractor or cease to satisfy the eligibility requirements; the main eligibility requirement being that the employee continues to be 'wholly or mainly engaged in the provision of probation services'

Signed by:

Date:

SCHEDULE 2

CONTRACTOR'S ANNUAL UPDATE CERTIFICATE

To: the Secretary of State for Justice (“**the Authority**”)

Copy to: Tameside Metropolitan Borough Council, Administering Authority for the Greater Manchester Pension Fund (“**the Administering Authority**”)

I, [*STATE NAME*], [*STATE POSITION*] of [*STATE NAME OF CONTRACTOR*] (the **Contractor**) confirm that, having made appropriate enquiries of [*STATE NAME OF SUBCONTRACTOR*] (the **Subcontractor**), the Administering Authority of the Greater Manchester Pension Fund has been notified of any Eligible Employees (as defined in the original certification) who were compulsorily transferred from the Contractor to the Subcontractor, who have since ceased to be wholly or mainly engaged in the provision of probation services or who have left the service of the Subcontractor.

Signed by:

Date:

SCHEDULE 3

INDUSTRY STANDARD PARTNERING AGREEMENT: PENSIONS

[This ISPA is an extract from the Contract between the Authority and the Contractor. Paragraphs 2.1; 2.2; 2.8; 2.9; 2.10; 2.11; 4.1; 4.5 are to be included in the subcontract between the Contractor and Subcontractor where the SSJ Pensions Guarantee is to apply to staff transfers pursuant to it.]

PART A

1. DEFINITIONS AND INTERPRETATIONS

In this Schedule:

Administering Authority means the Tameside Metropolitan Borough Council in its capacity as administering authority of the Fund or such other body administering the fund established under the Local Government Pension Scheme in which the Eligible LGPS Employees are active members or eligible to join.

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.

Authority's Statement of Recommended Discretionary Practices means the statement of recommended discretionary practices issued to Community Rehabilitation Companies from time to time setting out the recommended approach in relation to the exercise of a Scheme employer's functions to be the subject of the written statement referred to in regulation 60 of the LGPS 2013 Regulations.

Cessation Date means, for the purposes of paragraph 2.8, the date on which the Subcontractor (or, where applicable, an onward subcontractor) ceases to be an Admission Body other than as a result of the termination of this Agreement (or relevant onward subcontract) or because it (or where applicable, the relevant onward subcontractor) ceases to employ any Eligible LGPS Employees.

Contribution Liability has the meaning given to it in paragraph 2.3 of this Schedule.

Eligible LGPS Employees means those of the Original Employees who are active members of (or eligible to join) the Local Government Pension Scheme on an Original Employee Transfer Date, and who remain as active members (or eligible to join) the Local Government Pension Scheme for so long as they are wholly or mainly engaged in connection with the provision of the Services.

Eligible PCSPS Employees means those of the Original Employees who on an Original Employee Transfer Date are: (i) in reckonable service under the PCSPS within the meaning of the rules of the PCSPS, or (ii) eligible to be in reckonable service, or (iii) would be in reckonable service but for long term absence from work or a waiting period, or (iv) who opted out of membership of the PCSPS but who retain the right to opt back into membership, and, in all cases, who remain as active members (or eligible to join) the PCSPS for so long as they are wholly or mainly engaged in connection with the provision of the Services.

Exit Contribution means:

- (a) the revised contributions required by the Administering Authority from the Subcontractor set out in a rates and adjustment certificate arising as a result of a valuation carried out under regulation 64(2) of the LGPS 2013 Regulations upon the termination of this Agreement or, if earlier, on the termination of the Subcontractor Admission Agreement; or
- (b) the revised contributions required by the Administering Authority from a Subcontractor set out in the actuary's certificate prepared in the circumstances set out in regulation 64(4) of the LGPS 2013 Regulations; or
- (c) the revised contributions required by the Administering Authority from a Subcontractor set out in a rates and adjustment certificate arising as a result of a valuation carried out under regulation 64(2) of the LGPS 2013 Regulations, or otherwise, and pursuant to paragraph 2.5(i) in circumstances where the Subcontractor is treated as an exiting employer in relation to certain Original Employees who are transferring to a Future Service Provider or back to the Contractor on a transfer of part of the Services but the Subcontractor Admission Agreement is not terminating.

Fund means the Greater Manchester Pension Fund of the Local Government Pension Scheme.

Future Service Provider means any alternative service provider or onward subcontractor appointed by the Authority, Contractor or the Subcontractor to perform the Services or any part of the Services.

Ill-Health means any condition which qualifies a person for benefits under regulation 35 of the LGPS 2013 Regulations.

LGPS Admission Agreement means an admission agreement in respect of the Local Government Pension Scheme substantially in the form attached as Annex 1 to this Schedule.

LGPS Admission Body means an admission body for the purposes of paragraph 1 of Part 3 of Schedule 2 of the LGPS 2013 Regulations.

LGPS 2013 Regulations means the Local Government Pension Scheme Regulations 2013.

LGPS Fund means a pension fund within the Local Government Pension Scheme.

Local Government Pension Scheme means the occupational pension scheme constituted by the Local Government Pension Scheme Regulations 2013 and where the context admits, the earlier occupational pension schemes constituted under 1995, 1997 and 2008 Regulations made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972, as amended from time to time.

Minister means the Minister for the Civil Service.

New Scheme means the new public service pension scheme for civil servants established under the Public Service Pensions Act 2013 and planned to be introduced in 2015.

Old Scheme means the public service pension scheme for civil servants established under the Superannuation Act 1972.

Offender Management Regulations means the Local Government Pension Scheme (Offender Management) Regulations 2014.

Original CRC means one of the original community rehabilitation companies that provided probation services immediately prior to the Original CRC Transfer Date.

Original CRC Transfer Date means the date upon which an Original CRC providing some or all of the Services transferred from the ownership of the Authority into the ownership of a service provider in the private or voluntary sector.

Original Employee Transfer Date means the date on which an Original Employee transfers on a compulsory basis into the employment of the Subcontractor (or where applicable, an onward Subcontractor) whether by virtue of a Relevant Transfer, a deemed Relevant Transfer, a Staff Transfer Scheme or otherwise.

Original Employees means: (i) those employees wholly or mainly engaged in the provision of the Services immediately before the Original Employee Transfer Date whose employments transferred from the Authority or other body engaged in the provision of probation services to an Original CRC pursuant to a Relevant Transfer or a Staff Transfer Scheme prior to the Original CRC Transfer Date; (ii) any new employees who were employed by an Original CRC and engaged wholly or mainly in the provision of the Services prior to the Original CRC Transfer Date; and (iii) any employees who were wholly or mainly engaged in the provision of probation services immediately before the Original CRC Transfer Date and whose employments transferred from the Authority or another person engaged by the Authority to provide probation services to an Original CRC on a voluntary basis within the period of one calendar year from the Original CRC Transfer Date.

PCSPS means the Old Scheme and/or the New Scheme, whichever is relevant in the context.

PCSPS Admission Agreement means an admission agreement entered into between the Subcontractor, the Authority and the Minister for the Cabinet Office which sets out the terms by which the Subcontractor may participate in the PCSPS, substantially in the form attached as Annex 3 to this Agreement;

PCSPS Admission Body means a body admitted to the PCSPS under the terms of a PCSPS Admission Agreement.

PCSPS Rules means the provisions of the Superannuation Act 1972, The Public Service Pensions Act 2013 and all applicable regulations and statutory rules created under such Acts, the rules of the PCSPS listed in the PCSPS Admission Agreement and the EPG and EPN referred to in the PCSPS Admission Agreement.

Pensions Related Discretionary Action means any or all of the following acts or omissions of the Subcontractor occurring after the Original CRC Transfer Date other than as a result of any reorganisation or redundancy process commenced or agreed on or before the Original CRC Transfer 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 LGPS Employee;
- (b) the consent to or grant of any unreduced early retirement benefits to or in respect of an Eligible LGPS Employee or former Eligible LGPS Employee, whether or not for reasons of Ill-Health;
- (c) the consent to or grant of any other type of enhanced benefit under the LGPS 2013 Regulations to or in respect of an Eligible LGPS Employee or former Eligible LGPS Employee at the discretion of the Subcontractor, 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 LGPS Regulations) to Eligible LGPS Employees in excess of the Agreed Rate of Increase, calculated as the average increase over all Eligible LGPS 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 Contractor (or a Subcontractor) 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 Contractor's (or Subcontractor'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 Contractor (or a Subcontractor) 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 Administering Authority's Actuary in relation to the Subcontractor from time to time, including but not limited to costs arising from any breach of the Subcontractor Admission Agreement.

Previous Employer means the entity employing the Original Employees immediately prior to the transfer of their employments to the Subcontractor.

Relevant Transfer means a relevant transfer for the purposes of TUPE.

Retirement Benefit Scheme means a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

SSJ Pensions Guarantee means a guarantee to be provided by the Authority referred to in paragraph 2.7.

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

Subcontractor Admission Agreement means an LGPS Admission Agreement entered into in accordance with Part 3 of Schedule 2 of the LGPS 2013 Regulations by the Administering Authority, the Contractor and a Subcontractor.

Subcontractor Scheme has the meaning given to it in paragraph 2.9 of this Schedule.

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or modified from time to time.

All other capitalised terms shall have the meanings given to them in Schedule 1 to this Agreement.

2. LOCAL GOVERNMENT PENSION SCHEME

2.1 Subcontractors and onward subcontractors to be LGPS Admission Bodies under the Local Government Pension Scheme

- (a) The Subcontractor shall use its best endeavours to procure that it and/or any onward subcontractor remains or shall become (as appropriate) an LGPS Admission Body for the purpose of the Eligible LGPS Employees earning benefits under the Local Government Pension Scheme and shall remain an LGPS Admission Body for the duration of the Agreement (or the onward subcontract as the case may be).
- (b) The Subcontractor shall, before the Original Employee Transfer Date, execute, and shall (at the appropriate time) use best endeavours to procure that each relevant onward subcontractor executes

an LGPS Admission Agreement in relation to the participation of the Eligible LGPS Employees in the Local Government Pension Scheme during their employment with the Subcontractor or onward subcontractor. The LGPS Admission Agreement will have effect from and including the Original Employee Transfer Date or such later date (in the case of an onward subcontractor) upon which the Services or a part of the Services are subcontracted to, and Eligible LGPS Employees are employed by the onward subcontractor.

- (c) The Subcontractor shall, and shall procure that any onward subcontractor that is an LGPS Admission Body shall comply with the provisions of the LGPS Admission Agreement to which it is a party in all respects, for as long as it employs Eligible LGPS Employees.

2.2 Local Government Pension Scheme admission

The Subcontractor shall execute such agreements and shall use best endeavours to ensure that the Administering Authority executes such agreements as are required for it and its onward subcontractors to maintain their status as LGPS Admission Bodies in relation to the Eligible LGPS Employees for the duration of this Agreement and any onward subcontract for the provision of the Services.

2.3 Funding position of the Subcontractor's Fund at start of this Agreement and onward subcontracts

For the purposes of the Subcontractor's Admission Agreement and the Admission Agreement of any onward subcontractor, the Subcontractor's (or onward subcontractor's, as appropriate) liability to contribute to the Fund in respect of the Eligible LGPS Employees (**Contribution Liability**) will be evaluated by the Administering Authority's actuary on the basis that the assets in the Fund attributable to the liabilities in respect of the benefits payable to or in respect of the Eligible LGPS Employees at the Original Employee Transfer Date (or such later date upon which the Services or a part of the Services are subcontracted to and Eligible LGPS Employees are employed by the onward subcontractor, in the case of an onward subcontract) were equal to the value of those liabilities, calculated using the actuarial bases, methods and assumptions adopted by the Administering Authority's actuary for the purpose of determining the Contribution Liability.

2.4 Subcontractor contribution rate

Subject to the provisions of paragraph 2.9 below, on and from the Original Employee Transfer Date the Subcontractor shall pay to the Administering Authority on or before each relevant due date for payment such employer and employee contributions and other payments as are required from time to time under the LGPS 2013 Regulations and the Subcontractor Admission Agreement, to be credited to the Fund in respect of the Subcontractor's participation in the Local Government Pension Scheme for the Eligible LGPS Employees.

2.5 Funding position of the Subcontractor's Fund on, or in contemplation of, termination of the Subcontractor Admission Agreement

- (a) When the Subcontractor or onward subcontractor ceases to participate in the Local Government Pension Scheme on the termination of this Agreement or, if earlier, on the termination of the Subcontractor Admission Agreement the Contractor and the Subcontractor will liaise with the Administering Authority and the Authority as soon as reasonably practicable to determine whether any liabilities of the Fund will be transferring to a Future Service Provider or to the Authority for on-going funding before any Exit Contribution payable by the Subcontractor or onward subcontractor is calculated.
- (b) Any transfer of liabilities to the Future Service Provider or to the Authority will be taken into account in the calculation of the Exit Contribution in the manner agreed between the Authority and

Administering Authority (and the parties will use reasonable endeavours to ensure that no Exit Contribution is due where liabilities have been transferred to a Future Service Provider or to the Authority other than in relation to Pensions Related Discretionary Actions), but the Subcontractor's (or onward subcontractor's) liability to pay an Exit Contribution will be as set out in this paragraph 2.5 and the Subcontractor's (or onward subcontractor's) Admission Agreement.

- (c) The Subcontractor shall notify the Contractor immediately that it becomes aware that such an Exit Contribution is likely to fall due.
- (d) Where an Exit Contribution is determined by the Administering Authority as being due from the Subcontractor, the Administering Authority shall notify the Subcontractor and the Contractor of the amount due and the Subcontractor shall pay the Exit Contribution to the Administering Authority in accordance with this paragraph 2.5 and the terms of the Subcontractor Admission Agreement and the LGPS 2013 Regulations on or before the due date for payment notwithstanding any other provision of this Schedule.
- (e) Upon notification that an Exit Contribution is likely to fall due in accordance with paragraph 2.5(d), the Contractor and the Subcontractor shall each use all reasonable endeavours to procure that the Administering Authority notifies the Contractor and Subcontractor of the portion of such Exit Contribution which can be attributed to Pensions Related Discretionary Actions (the **PRA Value**) at the same time as it notifies the Subcontractor of the Exit Contribution due.
- (f) Upon being notified of the Exit Contribution and the PRA Value by the Administering Authority in accordance with paragraphs 2.5(d) and 2.5(e) above, the Contractor shall:
 - (i) deduct the PRA Value from the Exit Contribution to produce the sum being the **Adjusted Exit Contribution**; and
 - (ii) pay an amount equal to the Adjusted Exit Contribution to the Subcontractor within 30 days of receiving a written demand from the Subcontractor for payment of the Adjusted Exit Contribution.
- (g) Subject to paragraph 2.5(d) above, within seven (7) days of receipt of the Adjusted Exit Contribution, the Subcontractor shall pay an amount equal to the Exit Contribution to the Administering Authority in full and final settlement of all amounts due from the Subcontractor to the Fund under the Subcontractor Admission Agreement and the LGPS 2013 Regulations (unless payment has already been made in accordance with paragraph 2.5(d)) (or, where applicable, shall procure that the onward subcontractor pays an amount equal to any Exit Contribution falling due from that subcontractor under the onward subcontract).
- (h) In the event that the Subcontractor or onward subcontractor fails to pay the Exit Contribution to the Administering Authority in accordance with paragraph 2.5(g) (or the equivalent provision in the onward subcontract) the Contractor shall demand in writing the immediate repayment of the Adjusted Exit Contribution by the Subcontractor and the Subcontractor shall make the repayment within seven (7) days of such demand.
- (i) The Subcontractor or onward subcontractor will be treated as an exiting employer for the purposes of regulation 64 of the LGPS 2013 Regulations and this paragraph 2.5, and an Exit Contribution and Adjusted Exit Contribution may become payable in relation to any liabilities in respect of Original Employees transferring to a Future Service Provider on an onward subcontracting of part of the Services to the Future Service Provider, in circumstances where the Subcontractor Admission Agreement is not terminating.
- (j) For the avoidance of doubt this paragraph 2.5 shall survive the termination of this Agreement.

2.6 Right of set-off and direct payment to the Fund

The Contractor shall have the right to:

- (a) set off against any payments due to the Subcontractor under this Agreement an amount equal to:
 - (i) any overdue employer or employee contributions and any other overdue payments (including interest payable) due from the Subcontractor to the Fund under the Subcontractor Admission Agreement and the LGPS 2013 Regulations (including but not limited to the Exit Contribution) and to pay the overdue sums to the Fund;
 - (ii) any overdue employer or employee contributions and any other payments (including interest payable) due from any onward subcontractor to the Fund under an Admission Agreement with an onward subcontractor, and the LGPS 2013 Regulations (including but not limited to the Exit Contribution) and to pay the overdue sums to the Fund; and
 - (iii) subject to the Subcontractor not already having paid such amount to the Secretary of State for Justice in accordance with paragraph 2.7(b) below any payments made by the Authority to the Administering Authority under the SSJ Pensions Guarantee or under a similar guarantee in favour of the Administering Authority in respect of certain of the Subcontractor's obligations under a Subcontractor Admission Agreement and in respect of any onward Subcontractor's obligations under an Admission Agreement with an onward subcontractor, together with all reasonable costs and expenses incurred by the Authority relating to the same; and
- (b) pay the Adjusted Exit Contribution referred to in paragraph 2.5(f) direct to the Fund if the Contractor determines, in its absolute discretion, that the circumstances are such that the Subcontractor may not be able or willing to pay the Exit Contribution to the Fund for any reason.

2.7 Authority guarantee, indemnities and bonds

- (a) The Authority will provide a guarantee in favour of the Administering Authority in the form attached at Annex 2 in relation to any contributions payable by the Subcontractor and any onward subcontractor to the Local Government Pension Scheme in respect of the Eligible LGPS Employees.
- (b) Subject to the Contractor not already having set off such amount from any payments due to the Subcontractor under paragraph 2.6 above the Subcontractor must pay to the Secretary of State for Justice on demand an amount equal to any sum paid or that becomes payable by the Authority pursuant to the SSJ Pensions Guarantee together with all reasonable costs and expenses incurred by the Authority relating to the same.

2.8 Subcontractor or onward subcontractor ceases to be an LGPS Admission Body

If the Subcontractor employs any Eligible LGPS Employees from an Original Employee Transfer Date and:

- (a) due to exceptional circumstances beyond the control of the Authority, Contractor and Subcontractor, it is not possible to operate the provisions of paragraphs 2.1 to 2.6 inclusive meaning that continued access to the Local Government Pension Scheme for the Eligible LGPS Employees is not possible; or

- (b) if for any reason beyond the control of the Authority, Contractor and Subcontractor after the Original Employee Transfer Date the Subcontractor or any relevant onward subcontractor ceases to be an LGPS Admission Body (other than on the date of termination or expiry of this Agreement or because it ceases to employ any Eligible LGPS Employees), the date of such cessation being the **Cessation Date** and there are exceptional circumstances beyond the control of the Authority, Contractor and Subcontractor which mean that continued access to the Local Government Pension Scheme for the Eligible LGPS Employees is no longer possible,

then the provisions of paragraphs 2.1 to 2.7 inclusive shall not apply (without prejudice to any rights of the Authority or Contractor under those paragraphs) and the provisions of paragraph 2.9 shall apply.

2.9 Alternative to the Local Government Pension Scheme

Where this paragraph 2.9 applies pursuant to paragraph 2.8 the following shall apply:

- (a) The Subcontractor shall, or shall procure that the onward subcontractor shall, not later than the Original Employee Transfer Date or the Cessation Date (as the case may be), nominate to the Authority and the Contractor in writing the occupational pension scheme or schemes which are to be the **Subcontractor Scheme** for the purposes of this paragraph 2.9. The Subcontractor Scheme must be:
- (i) established within three (3) months prior to the Original Employee Transfer Date or Cessation Date (as the case may be), where reasonably practicable, and capable of receiving a bulk transfer payment from the Local Government Pension Scheme on terms described in Part B to this Schedule (Bulk Transfer Terms);
 - (ii) acceptable to the Authority and the Contractor as a scheme replacing the Local Government Pension Scheme for the Eligible LGPS Employees (such acceptance not to be unreasonably withheld or delayed);
 - (iii) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004; and
 - (iv) broadly comparable to the Local Government Pension Scheme in accordance with the Fair Deal Policy published by HM Treasury in June 1999 (“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”) and the Fair Deal guidance note issued by HM Treasury in June 2004 (“Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues”), or, if any of the Original Employees were not active members of the Local Government Pension Scheme immediately before the Original Employee Transfer Date or Cessation Date benefits, which are the same as, broadly comparable to or better than those provided under the pension scheme of which they were active members immediately before the Original Employee Transfer Date or Cessation Date (as the case may be);
- (b) The Subcontractor shall procure that:
- (i) the Original Employees shall, where reasonably practicable, not later than three (3) months before the Original Employee Transfer Date or the Cessation Date (as the case may be) be offered membership of the Subcontractor Scheme with effect on and from the Original Employee Transfer Date or the Cessation Date (as the case may be);
 - (ii) the Subcontractor Scheme shall provide benefits in respect of the Original Employees' periods of service on and after the Original Employee Transfer Date or

Cessation Date (as the case may be) which an actuary appointed by the Contractor or the Subcontractor shall certify to be the same as, broadly comparable to or better than the benefits to which the Original Employees were entitled under the Local Government Pension Scheme or the pension scheme of which they were active members immediately before the Original Employee Transfer Date or the Cessation Date (if this is not the Local Government Pension Scheme);

- (iii) where, for whatever reason, the Subcontractor Scheme has not been established at the Original Employee Transfer Date or Cessation Date (as the case may be) the Original Employees shall be provided with benefits in respect of death in service which are no less favourable than the death in service benefits provided by the Local Government Pension Scheme immediately before the Original Employee Transfer Date or Cessation Date (as the case may be). Such benefits will continue to be provided until appropriate death in service benefits are provided by the Subcontractor Scheme;
 - (iv) if the Subcontractor Scheme is terminated for whatever reason and benefits can no longer accrue under its terms for the benefit of the Original Employees who are members of it, a replacement pension scheme shall be provided by the Subcontractor (or the relevant onward subcontractor) with immediate effect for those Original Employees who are still employed by the Subcontractor (or the relevant onward subcontractor). The replacement pension scheme must comply with this paragraph 2.9 (Alternative to the Local Government Pension Scheme);
 - (v) all necessary information is provided to the staff, recognised unions and/or other appropriate representative bodies and, where applicable, consultation takes place, in relation to any proposals to offer membership of the Subcontractor's Scheme as an alternative to the Local Government Pension Scheme;
- (c) Part B (Bulk Transfer Terms) to this Schedule shall apply in relation to the terms for bulk transfers from the Local Government Pension Scheme to a Subcontractor Scheme following the Original Employee Transfer Date or Cessation Date (as the case may be) and any subsequent bulk transfers on termination or expiry of this Agreement or any subcontracting of the Services where a Future Service Provider or onward subcontractor is unable to gain admission to the Local Government Pension Scheme for whatever reason.

2.10 Undertaking from the Subcontractor

The Subcontractor undertakes to the Contractor (for the benefit of the Contractor itself and for the Contractor as agent and trustee for the benefit of the Original Employees) that:

- (a) all information which the Contractor or the Administering Authority or their respective professional advisers may reasonably request from the Subcontractor or any relevant onward subcontractor for the administration of the Local Government Pension Scheme or concerning any other matters raised in paragraph 2.9, paragraph 2.10 or in Part B (Bulk Transfer Terms) shall be supplied to them as expeditiously as possible;
- (b) it shall not and shall procure that any relevant onward subcontractor shall not, without the consent in writing of the Authority and the Contractor (which shall only be given subject to the payment by the Subcontractor or the relevant onward subcontractor of such reasonable costs as the Authority or the Administering Authority may require) consent to, instigate, encourage or assist any event (other than any act or omission falling within the meaning of paragraphs (a) to (e) of the definition of Pensions Related Discretionary Action) which could impose on the Local Government Pension Scheme or on the Authority or the Contractor a cost in respect of any Eligible LGPS Employee greater than the cost which would have been

payable in respect of that Eligible LGPS Employee had that consent, instigation, encouragement or assistance not been given; and

- (c) it shall not and shall procure that any relevant onward subcontractor shall not take or omit to take any action which would materially affect the benefits under the Local Government Pension Scheme or under the Subcontractor Scheme of any Eligible LGPS Employees who are or will be employed wholly or mainly in connection with the Services without the prior written agreement of the Authority and the Contractor (such agreement not to be unreasonably withheld or delayed), provided that the Subcontractor and/or any relevant onward subcontractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible LGPS Employees.

2.11 Discretionary Benefits

The Subcontractor shall comply with its obligations under regulation 60 of the LGPS 2013 Regulations in relation to the exercise of discretionary functions and where practicable and without prejudice to the discretionary nature of such functions adopt practices that are consistent with the Authority's Statement of Recommended Discretionary Practices to achieve consistency across employers engaged in the provision of probation services.

3. PRINCIPAL CIVIL SERVICE PENSION SCHEME

3.1 Subcontractor to be an Admitted Body under the PCSPS

- (a) The Subcontractor shall use its reasonable endeavours to procure that it and/or any onward subcontractor shall become a PCSPS Admission Body for the purpose of the Eligible PCSPS Employees earning benefits under the PCSPS and shall remain a PCSPS Admission Body for the duration of this Agreement (or the onward subcontract as the case may be).
- (b) The Subcontractor shall, before the Original Employee Transfer Date, execute, and procure that each onward subcontractor executes, a PCSPS Admission Agreement in order to allow participation by the Eligible PCSPS Employees in the PCSPS during their employment by the Subcontractor or onward subcontractor. The PCSPS Admission Agreement will have effect from and including the Original Employee Transfer Date or such later date (in the case of an onward subcontractor) upon which the Services or part of the Services are subcontracted to and Eligible PCSPS Employees are employed by the onward subcontractor.
- (c) The Subcontractor shall, and shall procure that any onward subcontractor that is a PCSPS Admission Body shall, comply with the provisions of the PCSPS Admission Agreement to which it is a party in all respects, for as long as it employs Eligible PCSPS Employees.

3.2 PCSPS admission

The Subcontractor shall execute such agreements, and shall use reasonable endeavours to ensure that the Minister executes such agreements as are required for the Subcontractor and its onward subcontractors to maintain their status as PCSPS Admission Bodies in relation to the Eligible PCSPS Employees for the duration of the Agreement and any onward subcontract for the provision of the Services.

3.3 PCSPS Contributions

The Subcontractor shall, and shall procure that each onward subcontractor that is a PCSPS Admission Body shall, pay to the PCSPS such amounts as are required of an employer participating in the relevant parts of the PCSPS under the terms of the relevant PCSPS Admission Agreement and PCSPS Rules, including employee contributions.

3.4 Right of Set-Off

The Contractor shall have a right to set off against any payments due to the Subcontractor under this Agreement:

- (a) an amount equal to any overdue employer and employee contributions and other overdue payments (including interest payable) due from the Subcontractor or from any onward subcontractor under a PCSPS Admission Agreement or the PCSPS Rules; and
- (b) any amounts payable by the Authority as a result of a failure by the Subcontractor or any onward subcontractor to comply with its obligations under the PCSPS Admission Agreement or the PCSPS Rules.

3.5 Service Provider ceases to be a PCSPS Admission Body

- (a) If the Subcontractor or any onward subcontractor employs any Eligible PCSPS Employees from an Original Employee Transfer Date and
 - (i) due to exceptional circumstances beyond the control of the Authority, Contractor and Subcontractor, it is not possible to operate the provisions of paragraphs 3.1 to 3.3 inclusive meaning that continued access to the PCSPS for the Eligible PCSPS Employees is not possible; or
 - (ii) if for any reason beyond the control of the Authority, Contractor and Subcontractor after the Original Employee Transfer Date, the Subcontractor or any onward subcontractor ceases to be a PCSPS Admission Body (other than on the date of termination or expiry of this Agreement or the PCSPS Admission Agreement or because it ceases to employ any Eligible PCSPS Employees), and there are exceptional circumstances beyond the control of the Authority, Contractor and Subcontractor which mean that continued access to the PCSPS for the Eligible PCSPS Employees is no longer possible,

then the provisions of paragraphs 3.1 to 3.3 inclusive shall not apply (without prejudice to any rights of the Authority and the Contractor under those paragraphs) and the provisions of paragraph 3.6 shall apply.

3.6 Alternative to the PCSPS

Where this paragraph 3.6 applies pursuant to paragraph 3.5 the following shall apply:

- (a) The Subcontractor shall, or shall procure that the onward subcontractor shall, not later than the Original Employee Transfer Date or the Cessation Date (as the case may be), nominate to the Authority and Contractor in writing the occupational pension scheme or schemes which are to be the "Subcontractor Scheme" for the purposes of this paragraph 3.6. The Subcontractor Scheme must be:
 - (i) established within three (3) months prior to the Original Employee Transfer Date or Cessation Date (as the case may be) and capable of receiving a bulk transfer payment from the PCSPS on terms described in Part B to this Schedule (Bulk Transfer Terms);
 - (ii) acceptable to the Authority and the Contractor as a scheme replacing the PCSPS for the Eligible PCSPS Employees (such acceptance not to be unreasonably withheld or delayed);
 - (iii) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004; and

- (iv) broadly comparable to the PCSPS in accordance with the Fair Deal Policy published by HM Treasury in June 1999 (“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”) and the Fair Deal guidance note issued by HM Treasury in June 2004 (“Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues”).
- (b) The Subcontractor shall procure that:
- (i) the Eligible PCSPS Employees shall not later than three (3) months before the Original Employee Transfer Date or the Cessation Date (as the case may be) be offered membership of the Subcontractor Scheme with effect on and from the Original Employee Transfer Date or the Cessation Date (as the case may be);
 - (ii) the Subcontractor Scheme shall provide benefits in respect of the Eligible PCSPS Employees' periods of service on and after the Original Employee Transfer Date or Cessation Date (as the case may be) which an actuary appointed by the Contractor or Subcontractor shall certify to be the same as, broadly comparable to or better than the benefits to which the Eligible PCSPS Employees were entitled under the PCSPS immediately before the Original Employee Transfer Date or the Cessation Date;
 - (iii) where, for whatever reason, the Subcontractor Scheme has not been established at the Original Employee Transfer Date or Cessation Date (as the case may be) the Eligible PCSPS Employees shall be provided with benefits in respect of death in service which are no less favourable than the death in service benefits provided by the PCSPS immediately before the Original Employee Transfer Date or Cessation Date (as the case may be). Such benefits will continue to be provided until appropriate death in service benefits are provided by the Subcontractor Scheme;
 - (iv) if the Subcontractor Scheme is terminated for whatever reason, a replacement pension scheme shall be provided by the Subcontractor (or the onward subcontractor) with immediate effect for those Eligible PCSPS Employees who are still employed by the Subcontractor (or the onward subcontractor). The replacement pension scheme must comply with this paragraph 3.6 (Alternative to the PCSPS);
 - (v) all necessary information is provided to the staff, recognised unions and/or other appropriate representative bodies and, where applicable, consultation takes place, in relation to any proposals to offer membership of the Subcontractor’s Scheme as an alternative to the PCSPS;
- (c) Part B (Bulk Transfer Terms) to this Schedule shall apply in relation to the terms for bulk transfers from the PCSPS to a Subcontractor Scheme following the Original Employee Transfer Date or Cessation Date (as the case may be) and any subsequent bulk transfers on termination or expiry of this Services Agreement or any sub-contracting of the Services where a Future Service Provider or Subcontractor is unable to gain admission to the PCSPS for whatever reason.

3.7 Undertaking from the Subcontractor

The Subcontractor undertakes to the Contractor (for the benefit of the Contractor itself and for the Contractor as agent and trustee for the benefit of the Eligible PCSPS Employees) that:

- (a) all information which:
 - (i) the Authority;

- (ii) the Contractor;
- (iii) the Minister;
- (iv) the professional advisers to the Minister and the Authority; and/or
- (v) the administrator of the PCSPS,

may reasonably request from the Subcontractor or any onward subcontractor for the administration of the PCSPS shall be supplied to them as expeditiously as possible;

- (b) it shall not and shall procure that any onward subcontractor shall not, without the consent in writing of the Contractor (which shall only be given subject to the payment by the Subcontractor or the onward subcontractor of such reasonable costs as the Contractor or the Minister may require), consent to, instigate, encourage or assist any event which could impose on the PCSPS or on the Authority a cost or liability in respect of any Eligible PCSPS Employee greater than the cost which would have been payable or liability that would have been incurred in respect of that Eligible PCSPS Employee had that consent, instigation, encouragement or assistance not been given; and
- (c) it shall not and shall procure that any onward subcontractor shall not take or omit to take any action which would materially affect the benefits under the PCSPS of any Eligible PCSPS Employees who are or will be employed wholly or mainly in connection with the performance of the Services without the prior written agreement of the Contractor (not to be unreasonably withheld or delayed) provided that the Subcontractor and/or any relevant onward subcontractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible PCSPS Employees.

4. GENERAL PROVISIONS

4.1 Subcontractor obligations on expiry or termination

The Subcontractor shall and shall procure that each relevant onward subcontractor shall:

- (a) maintain such documents and information as will be reasonably required to manage the pensions aspects of any onward transfer of any person engaged or employed by the Subcontractor or any onward subcontractor in the provision of the Services on the expiry or termination of this Agreement or a subcontract (including without limitation identification of the Original Employees, the Eligible LGPS Employees and the Eligible PCSPS Employees);
- (b) promptly provide to the Authority and the Contractor such documents and information mentioned in paragraph 2.10(a) and 3.7(a) which the Authority (or other entities referred to in paragraphs 2.10(a) and 3.7(a)) and/or the Contractor may reasonably request in advance of the expiry or termination of this Agreement or a subcontract; and
- (c) fully co-operate with the reasonable requests of the Authority and the Contractor relating to any administrative tasks necessary to deal with the pensions aspects of any onward transfer of any person engaged or employed by the Subcontractor or any onward subcontractor in the provision of the Services on the expiry or termination of this Agreement or a subcontract.

4.2 Contractor obligations on expiry or termination

Following the expiry or termination of this Agreement, the Contractor shall use its reasonable endeavours to procure that:

- (a) the Future Service Provider complies with the provisions of paragraph 2 and paragraph 3 of this Schedule, provided that references to the "Subcontractor" will become references to the Future Service Provider; and references to "Original Employees" will become references to the Original Employees transferred to the Future Service Provider;
- (b) the Future Service Provider undertakes that the Future Service Provider's scheme, for the purposes of complying with paragraphs 2.8 and 2.9 and/or paragraphs 3.5 and 3.6 (if necessary) is capable of receiving a bulk transfer of pension liabilities in relation to any onward transfer of an Original Employee engaged or employed by the Subcontractor and will receive such a transfer at the request of the Subcontractor or the Contractor.

4.3 Indemnity for a breach of the Subcontractor Admission Agreement or PCSPS Admission Agreement

The Subcontractor hereby indemnifies the Authority and the Contractor and/or any Future Service Provider and, in each case, their onward subcontractors on demand from and against all Losses suffered or incurred by it or them which arise from any breach by the Subcontractor of the terms of the Subcontractor Admission Agreement, the PCSPS Admission Agreement or this Agreement before or as a result of the termination or expiry of this Agreement (howsoever caused).

4.4 Claims from Eligible LGPS Employees and Eligible PCSPS Employees or Trade Unions

- (a) The Subcontractor hereby indemnifies the Authority, the Contractor and/or any Future Service Provider and, in each case, their subcontractors from and against all Losses suffered or incurred by it or them which arise from claims by Eligible LGPS Employees and Eligible PCSPS Employees of the Subcontractor and/or of any onward subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible LGPS Employees and Eligible PCSPS Employees which Losses:
 - (i) arise out of the acts or omissions of the Subcontractor or any onward subcontractor and relate to pension rights in respect of periods of employment on and after the Original Employee Transfer Date and on or before the date of termination or expiry of this Agreement (or the onward subcontract); or
 - (ii) arise out of the failure of the Subcontractor and/or any onward subcontractor to comply with the provisions of paragraphs 2 and 3 of this Schedule or the equivalent provisions in the onward subcontract before the date of termination or expiry of this Agreement (or the onward subcontract).
- (b) For the avoidance of doubt this paragraph 4.4 shall survive the termination of this Agreement.

4.5 Transfer to another Employer

Save on expiry or termination of this Agreement, if the employment of any Eligible LGPS Employee and/or any Eligible PCSPS Employee transfers to a Future Service Provider (by way of a Relevant Transfer or a Staff Transfer Scheme) in connection with a transfer or sub-contracting of the Services the Subcontractor shall:

- (a) consult with and inform those Eligible LGPS Employees and Eligible PCSPS Employees of the pension provisions relating to that transfer; and
- (b) procure that the Future Service Provider complies with and enters into an agreement containing provisions equivalent to the provisions of paragraph 2 (in particular paragraphs 2.1, 2.2, 2.8, 2.9, 2.10 and 2.11); paragraph 3 (in particular paragraphs 3.1, 3.2, 3.3, 3.5, 3.6

and 3.7) and paragraphs 4.1 and 4.5, provided that references to “Original Employee Transfer Date” will become references to the date of the transfer to the Future Service Provider and references to “Original Employees”, “Eligible LGPS Employees” and “Eligible PCSPS Employees” will become references to the Original Employees, Eligible LGPS Employees and Eligible PCSPS Employees so transferred to the Future Service Provider.

4.6 Third Party Rights

No term in this Schedule is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement. The Parties shall not require the consent of any third party to make any changes to this Schedule.

5. NEW EMPLOYEES AND EMPLOYEES NOT MEMBERS OF THE LOCAL GOVERNMENT PENSION SCHEME OR THE PCSPS

The Subcontractor shall at all material times, and shall procure that any onward subcontractors shall at all material times, in respect of new employees who are engaged in the provision of the Services under this Agreement or relevant onward subcontract, provide a Retirement Benefits Scheme which is a “qualifying scheme” for the purposes of the Service Provider’s auto-enrolment obligations under the Pensions Act 2008 the terms of which satisfy the conditions in s.258 Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 (where applicable).

PART 1

PART B

BULK TRANSFER TERMS

1. Interpretation and Definitions

In this Part B, unless the context otherwise requires, the following terms shall have the meanings given to them below:

Actuary's Letter	means a letter from the Administering Authority's or Minister's Actuary (as the case may be) setting out the assumptions that will be used to calculate a past service reserve transfer value allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of any final salary-type benefits) or allowing for the applicable active service revaluation rate to be applied up to the assumed date of retirement, leaving service or death (in the case of career average salary benefits);
Administering Authority's/ Minister's Actuary	means the actuary appointed by the Administering Authority or the Minister (as the case may be) for the purposes of this Part B;
AVCs	means additional voluntary or enhanced contributions payable by employees under the LGPS 2013 Regulations (or under regulations governing any of the Earlier Schemes within the meaning of regulation 1(6) of the Local Government Pension Scheme Transitional Provisions, Savings and Amendment Regulation 2014) or the PCSPS Rules (as the case may be);
Due Date	means the date agreed between the Subcontractor's Actuary and the Administering Authority's/Minister's Actuary which shall be no later than the date 60 days after the last of the conditions in paragraph 3.6 of this Part B has been satisfied;
Subcontractor's Actuary	means the actuary appointed by the Subcontractor and/or relevant onward subcontractor for the purposes of this Schedule;
Subcontractor's Scheme	means the pension scheme or schemes nominated by the Subcontractor and/or relevant onward subcontractor in accordance with paragraph 2.9 or paragraph 3.6 of Part A of this Schedule;
Transfer Amount	means the amount or amounts referred to in paragraph 3.1 of this Part B;
Transferring Member	means an Eligible LGPS Employee or an Eligible PCSPS Employee who agrees to a transfer of benefits being made for him or her from the Local Government Pension Scheme or the PCSPS (as the case may be) to the Subcontractor's Scheme under paragraph 2 of this Part B;

2. The Subcontractor's Scheme

- 2.1 The Subcontractor shall (and shall procure that each relevant onward subcontractor shall) invite each Eligible LGPS Employee or Eligible PCSPS Employee who joins the Subcontractor's Scheme in accordance with paragraph 2.9 or paragraph 3.6 of Part A of this Schedule to consent to a transfer of benefits being made for him from the Local Government Pension Scheme or the PCSPS (as the case may be) to the Subcontractor's Scheme. The Subcontractor and/or relevant onward subcontractor must issue this invitation no later than one month after the Relevant Transfer Date or Cessation Date (as applicable). The invitation must be in a form acceptable to the Authority, Contractor and the Administering Authority or Minister (such acceptance not to be unreasonably withheld or delayed). Any Eligible LGPS Employee or Eligible PCSPS Employee wishing to consent to a transfer of benefits must notify the Subcontractor and/or relevant onward subcontractor of this consent in writing no later than three months after the date of the invitation. The Subcontractor shall (and shall procure that each relevant onward subcontractor shall) provide the Authority, the Contractor, and the Administering Authority or Minister with the names of the Transferring Members no later than five months after the Relevant Transfer Date or Cessation Date (as applicable).

3. Transfer payment from the Local Government Pension Scheme or PCSPS

- 3.1 The Authority and Contractor shall use reasonable endeavours to ensure that the Administering Authority or Minister (as the case may be) transfers from the Local Government Pension Scheme or PCSPS (as the case may be) to the Subcontractor's Scheme on the Due Date an amount in respect of the relevant Transferring Members' service in the Local Government Pension Scheme or PCSPS before the Relevant Transfer Date or the Cessation Date calculated in accordance with the Actuary's Letter and the LGPS 2013 Regulations or the PCSPS Rules (as the case may be).
- 3.2 As soon as reasonably practicable following the Relevant Transfer Date or the Cessation Date, the Subcontractor shall (and shall procure that each relevant onward subcontractor shall) promptly provide all data within its possession or under its control which the Administering Authority, the Contractor and the Administering Authority's or Minister's Actuary may require for the calculation of the Transfer Amount and shall warrant that this data is in all material respects true, complete and accurate.
- 3.3 As soon as reasonably practicable following the Relevant Transfer Date or the Cessation Date, the Contractor shall promptly provide all data within its possession or under its control which the Administering Authority or the Minister and the Administering Authority's or Minister's Actuary may require for the calculation of the Transfer Amount and shall warrant that this data is in all material respects true, complete and accurate.
- 3.4 The Contractor shall use its reasonable endeavours to procure that:
- (a) as soon as reasonably practicable after the Administering Authority's or Minister's Actuary has been provided with the necessary data and information, the Administering Authority's or Minister's Actuary shall calculate the Transfer Amount in accordance with the Actuary's Letter and the LGPS 2013 Regulations or PCSPS Rules (as the case may be); and
 - (b) within one week of completing this calculation, the Administering Authority's or Minister's Actuary shall notify the Subcontractor's Actuary in writing of the particulars of the calculation and the data on which the calculation is based.

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

- 3.5 The Contractor and the Subcontractor shall use all reasonable endeavours to ensure that:
- (a) if the Subcontractor's Actuary objects in writing under paragraph 3.4 of this Part B, the Administering Authority's or Minister's Actuary and the Subcontractor's Actuary shall agree the Transfer Amount within three months (or such longer period as shall be agreed between the parties) of the objection;
 - (b) that if such agreement cannot be reached within that period, the amount shall be determined by an independent actuary to be nominated by the Administering Authority or Minister (as the case may be) and the Subcontractor and/or relevant onward subcontractor jointly or, if they cannot agree, by the President of the Institute of Actuaries on application by either party;
 - (c) the independent actuary shall act as an expert and not as an arbitrator, and his decision shall be final and binding on the parties; and
 - (d) the independent actuary's costs shall be payable equally by the Administering Authority or Minister and the Subcontractor and/or relevant onward subcontractor.
- 3.6 Payment to the Subcontractor's Scheme of the Transfer Amount shall only be made on the following conditions:
- (a) the Transfer Amount has been agreed or determined under paragraph 3.4 or 3.5 of this Part B and in accordance with the LGPS 2013 Regulations or the PCSPS Rules (as the case may be);
 - (b) the Subcontractor and/or relevant onward subcontractor has complied with all its obligations under this Part B; and
 - (c) the trustees of the Subcontractor's Scheme have confirmed in writing that:
 - (i) a payment should be made in accordance with the LGPS 2013 Regulations or PCSPS Rules (as the case may be) and that they shall accept payment on the terms set out in paragraph 4 of this Part B;
 - (ii) they shall accept liability for each Transferring Member's accrued contracted-out rights under the Local Government Pension Scheme or PCSPS; and
 - (iii) they shall accept the Transfer Amount in full and final settlement of all claims against the Local Government Pension Scheme or PCSPS in respect of each Transferring Member (save in the event of information provided by the Authority or the Local Government Pension Scheme [or the PCSPS] (as applicable) being materially incorrect or where there has been manifest error).
- 3.7 The payment of the Transfer Amount from the Local Government Pension Scheme shall be satisfied by the transfer of readily marketable stocks and shares of the Local Government Pension Scheme as agreed by the Administering Authority and the trustees of the Subcontractor's Scheme, having a mid-market value on the day before the Due Date equal to the Transfer Amount. If the Administering Authority and the trustees of the Subcontractor's Scheme are not able to agree some or all of the particular assets to be transferred, or the mid-market value of any such assets, the payment of the Transfer Amount (or the appropriate part of it) shall be satisfied by the Local Government Pension Scheme transferring cash equal in value to 99.8% of that part of the Transfer Amount in respect of which there has been no agreement as to the assets to be transferred (with the 0.2% deduction being an allowance for the costs incurred by the Administering Authority of making the transfer in cash).

- 3.8 The payment of the Transfer Amount from the PCSPS shall be satisfied by the PCSPS transferring cash equal to the Transfer Amount.

4. Past service benefits

The Subcontractor shall (and shall procure that each relevant onward subcontractor shall) ensure that the Subcontractor's Scheme provides in respect of each Transferring Member such benefits as the Administering Authority's or Minister's Actuary (as the case may be) certifies to be of actuarially equivalent value (in accordance with the Actuary's Letter) to the benefits which would have been payable under the Local Government Pension Scheme or PCSPS in respect of the Transferring Member's service before the Relevant Transfer Date or the Cessation Date (as applicable) if he had remained a member of the Local Government Pension Scheme or PCSPS.

5. Additional voluntary contributions

Nothing in this Part B shall apply to AVCs or to benefits secured by them. However, the Contractor shall use all reasonable endeavours to procure that the assets representing each Transferring Member's AVCs in the Local Government Pension Scheme or PCSPS (if any) shall be transferred to the Subcontractor's Scheme. The Subcontractor shall (and shall procure that each relevant onward subcontractor shall) ensure that the Subcontractor's Scheme provides benefits for each relevant Transferring Member which are equivalent to the assets transferred.

6. No assistance

The Subcontractor shall not (and shall procure that each relevant onward subcontractor shall not) encourage or initiate or assist or facilitate any action or provide any financial assistance for the purpose of requiring the Local Government Pension Scheme or PCSPS to pay an amount larger than the Transfer Amount to the Subcontractor's Scheme in respect of the Transferring Members.

7. Exit Provisions

- 7.1 The Subcontractor undertakes to the Contractor (for the benefit of the Contractor itself and for the Contractor as agent and trustee for the benefit of the Eligible LGPS Employees and Eligible PCSPS Employees that on:

- (a) the expiry or termination of this Agreement; or
- (b) the expiry or termination of any onward subcontract in the case of a relevant onward subcontractor; or
- (c) the employment of any Eligible LGPS Employee or Eligible PCSPS Employee transferring to a Future Services Provider as a result of a Staff Transfer Scheme or TUPE,

the Subcontractor shall (and shall procure that each relevant onward subcontractor shall), if requested by the Contractor, use its best endeavours to procure that the trustees of the Subcontractor's Scheme offer bulk transfer terms in respect of the relevant Eligible LGPS Employees' or Eligible PCSPS Employees' service in the Subcontractor's Scheme (including any service credits awarded in accordance with paragraph 4 of this Part B) to the pension scheme of the Contractor, any Future Service Provider (or their subcontractors), or any new Subcontractor (as applicable) which are no less favourable (in the opinion of the Administering Authority's or Minister's Actuary or an actuary appointed by the Contractor) than the bulk transfer terms set out in the Actuary's Letter, provided always that the bulk transfer payment that relates to the service credits that were awarded in the Subcontractor's Scheme in accordance with Paragraph 4 of this Part B shall be not less than that provided for under the Actuary's Letter. The Service Credits to be awarded by the pension scheme of the Contractor, any Future Service Provider or any new subcontractor shall be

awarded on a day for day basis or actuarial equivalent basis where there are benefit differences between the two Schemes. In addition to this, the Subcontractor shall procure that the Future Services Provider complies with the requirements of paragraph 4.1 of Part A to this Schedule.

7.2 If the transfer payment paid by the trustees of the Subcontractor's Scheme is less (in the opinion (acting reasonably) of the Administering Authority's or Minister's Actuary or an actuary appointed by the Contractor) than the transfer payment which would have been paid had paragraph 7.1 of this Part B been complied with, the Subcontractor shall (and/or shall procure that each relevant onward subcontractor shall) pay to the Contractor, or any Future Service Provider (or their subcontractor), (as appropriate) (or as such person shall direct) the amount of the difference.

8. Contractor's Costs

Any costs of the Contractor necessarily and reasonably incurred in connection with this Part B shall be borne by the Subcontractor.

SCHEDULE 4

SECRETARY OF STATE FOR JUSTICE PENSIONS GUARANTEE

GUARANTEE

DATED [●]

By

**THE SECRETARY OF STATE FOR JUSTICE
as Guarantor**

relating to an

Admission Agreement

entered into by

TAMESIDE METROPOLITAN BOROUGH COUNCIL

and

[THE SUBCONTRACTOR]

**in relation to participation in the Local Government Pension Scheme
of employees engaged in the provision of probation services**

CONTENTS

Clause	Page
1. Interpretation	34
2. Guarantee.....	36
3. Claims, payments and rights.....	36
4. Representations	38
5. Termination	39
6. Changes to the Parties	39
7. Notices.....	39
8. Waiver of immunity	40
9. Amendment	40
10. Counterparts	40
11. Third party rights.....	40
12. Governing law	41
13. Jurisdiction	41
Schedule	
6. Specimen Payment Notice.....	42
Signatories	43

THIS DEED OF GUARANTEE is dated [●] and is made **BETWEEN**:

- (1) **THE SECRETARY OF STATE FOR JUSTICE** acting through the National Offender Management Service of 70 Petty France, London, SW1H 9EX (the **Guarantor**);
- (2) **TAMESIDE METROPOLITAN BOROUGH COUNCIL** of Council Offices, Wellington Road, Ashton-under-Lyne, OL6 6DL (the **Administering Authority**); and
- (3) [**THE SUBCONTRACTOR**] (company registration number [●]) whose registered office is at [●] (the **Subcontractor**).

BACKGROUND

- (A) The Administering Authority is an administering authority within the meaning of the Regulations. It administers and maintains the Fund in accordance with the Regulations.
- (B) The Subcontractor is an admission body within the meaning of paragraph 1(e) of Part 3 of Schedule 2 of the Regulations admitted pursuant to the Subcontract.
- (C) [*Insert name of relevant CRC*] has entered into the Subcontract with the Subcontractor for the provision of probation services. Pursuant to the Subcontract employees of the Subcontractor will continue as members of the Scheme.
- (D) Subject to the provision of a guarantee in the form of this Deed, the Administering Authority and the Subcontractor intend to enter into the Admission Agreement.
- (E) The Guarantor has agreed to enter into this Deed as a guarantee granted in favour of the Administering Authority in a form acceptable to the Administering Authority and to the Subcontractor.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Deed:

Admission Agreement means the admission agreement dated [●] between the Administering Authority, [*insert name of relevant CRC*] and the Subcontractor to allow the Subcontractor to be admitted to the Scheme and to participate in the Fund.

Business Day means any day other than a Saturday or a Sunday or a Public or Bank Holiday in England.

Commencement Date means the effective date of the Admission Agreement being [●].

Fund means the Greater Manchester Pension Fund.

Party means a party to this Deed.

Payment Notice means a notice substantially in the form of the notice of Schedule 1.

Regulations means The Local Government Pension Scheme Regulations 2013.

Relevant Event means if any of the following occurs in respect of the Subcontractor:

- (a) an order for its winding-up, administration or dissolution is made;
- (b) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it;
- (c) its shareholders, directors or other officers appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar office; or
- (d) any other analogous step or procedure is taken in any jurisdiction.

Reservations means:

- (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of the court and damages may be regarded as an adequate remedy;
- (b) the limitation on enforcement as a result of laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws affecting the rights of creditors generally;
- (c) the statutory time-barring of claims;
- (d) defences of set off or counterclaim;
- (e) rules against penalties and similar principles;
- (f) the fact that security which is described as fixed security may in fact be floating security;
- (g) the possibility that an undertaking to assume liability for, or indemnify a person against, non-payment of stamp duty may be void;
- (h) the fact that a court may refuse to give effect to a purported contractual obligation to pay costs imposed upon another person in respect of costs of an unsuccessful litigation brought against that person or may not award by way of costs all of the expenditure incurred by a successful litigant in proceedings brought before that court or that a court may stay proceedings if concurrent proceedings based on the same grounds and between the same parties have previously been brought before another court;
- (i) steps for perfection not required by the terms of this Deed to be taken,

and any other reservations or qualifications of law contained in any legal opinion delivered to the Administering Authority or the Guarantor in respect of this Deed.

Scheme means the Local Government Pension Scheme established and governed by the Regulations under Sections 7 and 12 of the Superannuation Act 1972.

Scheme Liabilities means all employer and employee contributions, payments and other sums properly due from the Subcontractor to the Fund under the Admission Agreement and/or under the Regulations by reference to the Subcontractor's participation in the Local Government Pension Scheme under the Admission Agreement (including for the avoidance of doubt any revised contributions due under Regulation 64 of the Regulations).

Subcontract means the contract between the Subcontractor and [*insert name of relevant CRC*] dated [●] (as may be amended from time to time).

1.2 Construction

- (a) Capitalised terms defined in the Regulations have, unless expressly defined in this Deed, the same meaning in this Deed.
- (b) This Deed includes a heading at the start of each Clause which outlines its provisions. These are included for information only.
- (c) Any reference in this Deed to any law or piece of legislation shall include any subsequent amendment to it and any ancillary legislation made under it.

2. GUARANTEE

From the Commencement Date, the Guarantor hereby unconditionally and irrevocably:

- (a) guarantees upon the occurrence of a Relevant Event and subject to the terms of this Deed, to pay to the Administering Authority immediately on demand by the Administering Authority for the benefit of the Fund any Scheme Liabilities which are unpaid by reason of non-payment by the Subcontractor, as if the Guarantor was the principal obligor; and
- (b) agrees that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Administering Authority for the benefit of the Fund immediately on demand against any costs, loss or liability it incurs as a result of the Subcontractor not paying any Scheme Liabilities which would, but for such unenforceability, invalidity or illegality, have been payable, on the date when such Scheme Liabilities would have been due. The amount payable by the Guarantor under this indemnity will be equal to the amount that would have been payable under Clause 2(a) if the guaranteed obligation had not been or become unenforceable, invalid or illegal.

3. CLAIMS, PAYMENTS AND RIGHTS

3.1 Claims and payments

- (a) Any claim by the Administering Authority shall be made by the service of a Payment Notice, supported by such evidence as the Secretary of State may reasonably require, including but not limited to evidence of compliance by the Administering Authority with its obligations under Clause 3.5(b) of this Deed.
- (b) Such Payment Notice and supporting evidence shall be accepted by the Guarantor as conclusive evidence for all purposes that the amount claimed is due to the Fund.
- (c) The Guarantor shall pay the sum demanded in the relevant Payment Notice within 30 Business Days of receipt of that Payment Notice.
- (d) All sums paid by the Guarantor in accordance with this Deed shall be held and applied by the Administering Authority for the purpose of discharging the Scheme Liabilities. Any sums not so applied within three calendar months of receipt by the Administering Authority shall be returned to or held to the order of the Guarantor.

3.2 Continuing guarantee

Subject to Clause 5 (Termination), the obligations of the Guarantor hereunder shall be continuing obligations notwithstanding any settlement of account and, in particular but without limitation, shall not be considered satisfied by any intermediate payment or satisfaction of all or any of the Scheme Liabilities.

3.3 Waiver of defences

The obligations of the Guarantor under this Deed shall not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release, diminish or prejudice any of its obligations under this Deed. In particular (but without limitation) the obligations of the Guarantor under this Deed shall not be affected by (i) any lack of validity or enforceability of, or any amendment to (however fundamental and of whatever nature), the Scheme Liabilities or the Admission Agreement, (ii) any increase or additions to the Scheme Liabilities (iii) the granting of any time, indulgence or concession by any party to the Subcontractor or (iv) any insolvency or similar proceedings in relation to the Subcontractor.

3.4 Reinstatement

- (a) If any discharge, release or arrangement is made in respect of the Scheme Liabilities in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Clause will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- (b) The Administering Authority may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

3.5 Recourse

- (a) Subject to Clause 3.5(b) below, the Guarantor waives any right it may have of first requiring any Party (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person before claiming from the Guarantor under this Clause. This waiver applies irrespective of any law or any provision of the Admission Agreement, the Subcontract or any related agreement to the contrary.
- (b) Before serving a Payment Notice under this Deed, the Administering Authority shall first:
 - (i) use its reasonable endeavours to recover from the Subcontractor any Scheme Liabilities that are due to it but have not been paid (provided that the Administering Authority will not be required under this Clause to commence proceedings against the Subcontractor);
 - (ii) comply with any requirement to notify the Pensions Regulator of the non-payment of Scheme Liabilities; and
 - (iii) notify the Guarantor of the non-payment of Scheme Liabilities as soon as reasonably practicable after becoming aware of the non-payment.

3.6 Non-competition

Unless:

- (a) all amounts which may be or become payable by the Subcontractor to the Fund under the Admission Agreement have been irrevocably paid in full; or
- (b) the Administering Authority otherwise directs,

the Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations under this Deed or by reason of any amount being payable, or liability arising, under this Deed:

- (i) to be indemnified by the Subcontractor;
- (ii) to claim any contribution from any other guarantor of the Subcontractor's obligations or liabilities to make payments to the Fund;
- (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Administering Authority in respect of the Subcontractor's obligations or liabilities to make payments to the Fund under the Admission Agreement, or under or pursuant to any other guarantee or security taken in connection with such obligations or liabilities of the Subcontractor by the Administering Authority;
- (iv) to bring legal or other proceedings for an order requiring the Subcontractor to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under this Deed;
- (v) to exercise any right of set-off against the Subcontractor; and/or
- (vi) to claim or prove as a creditor of the Subcontractor in competition with the Administering Authority.

3.7 The Guarantor must hold in trust for and immediately pay or transfer to the Administering Authority (or in accordance with any direction given by the Administering Authority under this Clause) any payment or distribution or benefit of security received by it contrary to this Clause.

3.8 Additional security

The guarantee contained in this Deed is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Administering Authority

3.9 Enforcement and preservation costs

The Guarantor shall, within 30 Business Days of demand, pay to the Administering Authority the amount of all reasonable costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under this Deed and any proceedings instituted by or against the Administering Authority as a consequence of taking, holding or enforcing this Deed.

3.10 Guarantor default

The Guarantor shall, within 30 Business Days of demand, indemnify the Administering Authority against all reasonable costs and expenses, loss or liability incurred by it as a result of any default by the Guarantor in the performance of any of the obligations expressed to be assumed by it in this Deed.

4. REPRESENTATIONS

4.1 Representations

The representations set out in this Clause are made by the Guarantor.

4.2 Powers and authority

It has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of, this Deed and the transactions contemplated by this Deed.

4.3 Legal validity

Subject to the Reservations, the obligations expressed to be assumed by it in this Deed are legal, binding, valid and enforceable obligations.

4.4 Non-conflict

The entry into and performance by it of, and the transactions contemplated by, this Deed do not conflict with any law or regulation applicable to it

4.5 Authorisations

All authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Deed have been obtained or effected (as appropriate) and are in full force and effect.

4.6 Times for making representations

The representations set out in this Clause are made by the Guarantor on the date of this Deed.

5. TERMINATION

(a) This Deed shall terminate (and the obligations and liabilities of the Guarantor shall cease and determine absolutely) following the settlement of all Scheme Liabilities due in respect of the Subcontractor's participation in the Scheme.

(b) For the avoidance of doubt this Deed may extend beyond the termination of the Admission Agreement.

6. CHANGES TO THE PARTIES

No Party may assign or transfer any of its rights and obligations under this Deed.

7. NOTICES

7.1 Communications in writing

Any communication to be made under or in connection with this Deed must be made in writing and, unless otherwise stated, may be made by fax or letter.

7.2 Addresses

(a) The contact details of the Guarantor for this purpose are:

Address: National Offender Management Service
70 Petty France
London SW1H 9EX
Fax number: 0300 047 6819
Attention: Director of Finance.

(b) The contact details of the Subcontractor for this purpose are:

Address: [●]
Fax number: [●]
Attention: [Company Secretary].

(c) The contact details of the Administering Authority for this purpose are:

Address: Tameside MBC, Council Offices, Wellington Road, Ashton-under-Lyne, OL6 6DL
Fax number: 0161 342 2331
Attention: Euan Miller – Assistant Executive Director (Pensions).

(d) Any Party may change its contact details by giving five Business Days' notice to each other Party.

7.3 Delivery

(a) Except as provided below, any communication made or delivered by one Party to another under or in connection with this Deed will only be effective:

- (i) if by way of fax, when received in legible form; or
- (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 7.2 (Addresses), if addressed to that department or officer.

(b) Any communication to be made or delivered to the Guarantor will be effective only when actually received by the Guarantor addressed as set out in Clause 7.2 (Addresses).

8. WAIVER OF IMMUNITY

The Guarantor irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought by the Administering Authority against it in relation to this Deed and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
- (c) waives all rights of immunity in respect of it or its assets.

9. AMENDMENT

Any term of this Deed may be amended by deed, with the consent in writing of all the Parties and any such amendment or will be binding on all the Parties.

10. COUNTERPARTS

This Deed may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

11. THIRD PARTY RIGHTS

A person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

12. GOVERNING LAW

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

13. JURISDICTION

- (a) The English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a **Dispute**).
- (b) The Parties agree that the English courts are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary

This Deed has been entered into as a deed on the date stated at the beginning of this Deed.

SCHEDULE 1 TO THE SSJ GUARANTEE

SPECIMEN PAYMENT NOTICE

To: **SECRETARY OF STATE FOR JUSTICE**
c/o The Director of Finance
National Offender Management Service
70 Petty France
London SW1H 9EX

From: **TAMESIDE METROPOLITAN BOROUGH COUNCIL**

[DATE]

Guarantee dated [●] between the Secretary of State for Justice in favour of the Subcontractor relating to an Admission Agreement entered into by Tameside Metropolitan Borough Council (the Guarantee)

1. We refer to the Guarantee.
2. Capitalised terms defined in this payment notice have, unless expressly defined in this payment notice, the same meaning in this payment notice.
3. We certify that a Relevant Event has occurred in relation to the Subcontractor and that the sum of [●] pounds sterling (£) is properly due in respect of the Scheme Liabilities.
4. We confirm that we have complied with the terms of clause 3.5(b) (Recourse) of the Guarantee.
5. We demand payment of the above amount under and in accordance with the Guarantee.
6. The above amount should be paid to us by transfer to the following account:

Account Number: [●]

Sort Code: [●]

Account Name: [●]

Bank: [●]

Bank Address : [●]

Duly authorised for and on behalf of the [●] Administering Authority

SIGNATORIES

GUARANTOR

THE CORPORATE SEAL of:)
THE SECRETARY OF STATE)
FOR JUSTICE)
Hereunto affixed is authenticated by:)

Authorised by the Secretary of State

ADMINISTERING AUTHORITY

THE COMMON SEAL of:)
TAMESIDE METROPOLITAN BOROUGH)
COUNCIL was hereunto affixed in)
the presence of:)

.....

Borough Solicitor

SUBCONTRACTOR

EXECUTED as a deed by)

[THE SUBCONTRACTOR])

)

acting by , a director)

in the presence of:) Director

Witness's Signature

Name:

Address:

.....

SCHEDULE 5

LOCAL GOVERNMENT PENSION SCHEME ADMISSION AGREEMENT

OFFICIAL SENSITIVE

DATED

2014

TAMESIDE METROPOLITAN BOROUGH COUNCIL

and

[SUBCONTRACTOR]

and

[COMMUNITY REHABILITATION COMPANY]

ADMISSION AGREEMENT

relating to an Admission Body within the Local Government Pension Scheme

Sandra Stewart
Borough Solicitor
Tameside MBC
Council Offices
Wellington Road
Ashton-under-Lyne
OL6 6DL

GMPFL/CO:21915730.1

CONTENTS

Clause	Page
1. DEFINITIONS AND INTERPRETATION.....	48
2. EFFECTIVE DATE	52
3. ADMISSION.....	52
4. EFFECT OF THE REGULATIONS.....	52
5. PARTICIPATION.....	53
6. DUTIES OF THE ADMINISTERING AUTHORITY	53
7. DUTIES AND UNDERTAKINGS OF THE ADMISSION BODY.....	53
8. INDEMNITY OR BOND FROM ADMISSION BODY.....	56
9. ACTUARIAL POOLING	56
10. FUNDING ON TERMINATION OR THE TRANSFER OF ELIGIBLE EMPLOYEES TO A FUTURE SERVICE PROVIDER.....	56
11. PAST SERVICE LIABILITY.....	58
12. SET OFF.....	58
13. RIGHTS OF THE SECRETARY OF STATE FOR JUSTICE AND CRC	58
14. TERMINATION	58
15. SERVICE OF NOTICES	59
16. SEVERANCE	60
17. RIGHTS OF THIRD PARTIES	60
18. PUBLIC INSPECTION.....	60
19. AMENDMENT	60
20. FAILURE TO AGREE.....	60
21. APPLICABLE LAW	61
22. COUNTERPARTS.....	61

Schedule

7. List of Transferring Active Eligible Employees.....	62
8. List of Transferring Non-Active Eligible Employees	63
9. Information to be retained and provided to the administering authority by an admission body	64

Appendix

1. Agreed Form Secretary of State for Justice Guarantee	Error! Bookmark not defined.
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THIS DEED is dated

PARTIES

- (4) **TAMESIDE METROPOLITAN BOROUGH COUNCIL** of Council Offices, Wellington Road, Ashton-under-Lyne, OL6 6DL (**‘Administering Authority’**);
- (5) **[SUBCONTRACTOR]** (Company Registration Number [●]) whose registered office is situated at [●] (**‘Admission Body’**) and
- (6) **[COMMUNITY REHABILITATION COMPANY]** (Company Registration Number [●]) whose registered office is situated at [●] (**‘CRC’**);

BACKGROUND

- (F) The Administering Authority is an administering authority as defined under Schedule 1 of the Regulations. It administers and maintains the Fund.
- (G) 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.
- (H) 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.
- (I) The Contractor provides offender services in the [area] pursuant to the Services Agreement.
- (J) The Contractor has agreed to sub-contract the Services to the Admission Body under the terms of the Sub-Contract with effect on and after the Effective Date.
- (K) 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.
- (L) 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.
- (M) The terms and conditions of admission have been agreed between the parties to this agreement as follows.
- (N) The terms provide for the **Secretary of State for Justice** of 102 Petty France London SW1H 9EX to be granted such rights as are specified

AGREED TERMS

14. DEFINITIONS AND INTERPRETATION

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.

‘**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 CRC 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 on or after the Effective 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 acquire[d][s] the shares of the CRC on the Amendment Date.

‘**Effective Date**’ means [*Insert the same date as the Commencement Date under the SSJ Guarantee*].

‘**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 Subcontract 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, the CRC or the Admission Body to perform the Services or any part of the Services.

‘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:

- (d) 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;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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

- (i) 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.

'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 Subcontract.

'Services Agreement' means the contract dated 1 June 2014 between the Secretary of State for Justice and the CRC and any amended and restated Services Agreement between the Secretary of State for Justice and the CRC.

'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.

Subcontract means the contract dated [●] between the Admission Body and the CRC.

'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; and
- (ii) a Grace Period Employee;

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

- (j) 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
- (k) 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; and
- (ii) a Grace Period Employee;

provided that:

- (a) 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) 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.

- 14.2 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.
- 14.3 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 14.4 A **‘person’** includes a natural person and a corporate or unincorporated body, whether or not having separate legal personality.
- 14.5 A reference to a **‘company’** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 14.6 Words in the singular shall include the plural and vice versa.
- 14.7 A reference to one gender shall include a reference to the other gender.
- 14.8 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.
- 14.9 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.
- 14.10 A reference to **‘writing’** or **‘written’** includes faxes but not e-mail.
- 14.11 Any obligation in this agreement on a person not to do something includes an obligation not to allow that thing to be done.
- 14.12 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.
- 14.13 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the schedules.

15. EFFECTIVE DATE

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

16. ADMISSION

- 16.1 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 Regulations and shall assume all the responsibilities of a Scheme employer provided for in the Regulations.
- 16.2 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.
- 16.3 This is to be an open admission agreement but no employees of the Admission Body 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.
- 16.4 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.
- 16.5 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.

17. EFFECT OF THE REGULATIONS

- 17.1 The Regulations will apply in determining the rights, obligations and actions to be taken by each party to this agreement.
- 17.2 The Regulations will govern the transfer of information between each of the parties.
- 17.3 Each party agrees with the others to take such action as is required to comply with the Regulations.
- 17.4 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.

18. PARTICIPATION

- 18.1 The Admission Body warrants and represents to the Administering Authority, and the CRC 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.
- 18.2 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 and/or the CRC, the Secretary of State for Justice and/or the CRC 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 and the CRC by the Admission Body and/or the Administering Authority on request.

19. 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.

20. DUTIES AND UNDERTAKINGS OF THE ADMISSION BODY

Undertakings

- 20.1 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.
- 20.2 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

20.3 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;
- (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.

20.4 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 and/or CRC, the Secretary of State for Justice and/or the CRC 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 and/or the CRC 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.

20.5 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

- 20.6 The Admission Body undertakes with the Administering Authority and the CRC 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.
- 20.7 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 and/or the CRC, the Secretary of State for Justice and/or the CRC of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion.

Records

- 20.8 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.
- 20.9 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.
- 20.10 The Admission Body must promptly (and in any event within twenty eight (28) days) give notice in writing to the Administering Authority, the Secretary of State for Justice and the CRC 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, the Secretary of State for Justice and the CRC 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 Subcontract.

Previous membership

- 20.11 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)(Amendment) 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

- 20.12 The Admission Body indemnifies and will keep indemnified the Secretary of State for Justice, the CRC and the Administering Authority against all and any loss, damage, costs and expenses reasonably incurred by the Secretary of State for Justice, the CRC 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, the CRC or the Administering Authority in enforcing their rights against the Admission Body under this agreement.

21. INDEMNITY OR BOND FROM ADMISSION BODY

- 21.1 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 the CRC.
- 21.2 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.

22. ACTUARIAL POOLING

- 22.1 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 all 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).
- 22.2 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.
- 22.3 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.

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

- 23.1 On:
- (a) the termination of the Subcontract 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 CRC 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, the CRC or 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.

- 23.2 The Admission Body shall notify the Secretary of State for Justice, the CRC and the Administering Authority immediately that it becomes aware that such an Exit Contribution is likely to fall due and the CRC shall notify the Administering Authority if it becomes aware that an Exit Contribution is likely to fall due.
- 23.3 Any transfer of liabilities to (and subsumption of those liabilities by) a Future Service Provider, the CRC 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, the CRC 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, the CRC 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.
- 23.4 Where an Exit Contribution is determined by the Administering Authority as being due, the Administering Authority shall notify the Admission Body, the Secretary of State for Justice and the CRC 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.
- 23.5 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.
- 23.6 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.
- 23.7 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

- 23.8 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.

24. PAST SERVICE LIABILITY

Subject to clause 7.11, the Admission Body and the CRC 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.

25. SET OFF

The CRC may set off against any payments due to the Admission Body under the Subcontract 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.

26. RIGHTS OF THE SECRETARY OF STATE FOR JUSTICE AND CRC

- 26.1 In the event of an early retirement referred to in clause 7.4, the Secretary of State for Justice and/or CRC 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 and/or the CRC, the Administering Authority shall make a request to the Admission Body under clause 7.4 (c) or (d).
- 26.2 The Secretary of State for Justice and/or the CRC 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 Subcontract.
- 26.3 The Secretary of State for Justice has the right to enforce all terms under this agreement under which he is expressly stated to have rights including but not limited to the indemnity in clause 7.12.

27. TERMINATION

- 27.1 The Administering Authority (or, in the case of clause 27.1(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 27.1); 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 27.1; 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.

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

- (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 Subcontract.

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

28. SERVICE OF NOTICES

28.1 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.

28.2 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.

29. SEVERANCE

- 29.1 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.
- 29.2 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.

30. RIGHTS OF THIRD PARTIES

Except as expressly stated in this agreement in relation to the Secretary of State for Justice, a person who is not a party to this agreement shall not have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

31. PUBLIC INSPECTION

This agreement shall be available for public inspection at the above named office of the Administering Authority during usual business hours. The contents of this agreement are not confidential and can be published by either party if necessary or if requested to do so but with Schedules 1 and 2 redacted as appropriate to comply with all applicable data protection laws.

32. 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.

33. 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.

34. APPLICABLE LAW

- 34.1 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.
- 34.2 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).

35. 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

OFFICIAL SENSITIVE

SCHEDULE 1 TO THE ADMISSION AGREEMENT

LIST OF TRANSFERRING ACTIVE ELIGIBLE EMPLOYEES

Surname	Name	National Insurance Number
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OFFICIAL SENSITIVE

SCHEDULE 2 TO THE ADMISSION AGREEMENT

LIST OF TRANSFERRING NON-ACTIVE ELIGIBLE EMPLOYEES

Surname	Name	National Insurance Number
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OFFICIAL SENSITIVE

SCHEDULE 3 TO THE ADMISSION AGREEMENT

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

7. Pay records for the previous 13 years for all Eligible Employees with pre 1 April 2014 pensionable service under the Scheme.
8. 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.
9. Pensionable pay for each relevant Eligible Employee at the preceding 31 March of each year.
10. Hours worked, any periods of absence and all contributions (including additional contributions) payable by each relevant Eligible Employee.

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

was hereunto affixed in the presence of:

Borough Solicitor

EXECUTED as a deed by)
[SUBCONTRACTOR])
acting by [NAME OF DIRECTOR], a director)
in the presence of:) Director

Witness's Signature

Name:

Address:

.....

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:

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