

**ISLE OF WIGHT COUNCIL – HIGHWAYS PFI**

**ANNEXURE 13 – BULK TRANSFER TERMS**

## ANNEXURE 13

### BULK TRANSFER TERMS

#### 1 Interpretation and Definitions

In this annexure 13, unless the context otherwise requires, the following terms shall have the meanings given to them below:

"Actuary's Letter"	means the letter from the Government Actuary Department;
"AVCs"	means AVCs or SCAVCs as defined in the LGPS Regulations;
" Due Date "	means the date [●] days after the last of the conditions in paragraph 3.6 of this annexure 13 has been satisfied;
"Fund"	means the Isle of Wight Council Pension Fund;
"Government Actuary Department"	means such body or any replacement or successor body which provides actuarial advice to all parts of the United Kingdom Government and any relevant United Kingdom public bodies, on policy related to pensions, social security and other actuarial matters;
"Pension Scheme"	shall have the meaning given to it in clause 71.5 ( <i>Alternative Pension Scheme</i> ) of this Agreement;
"Service Provider's Actuary"	means [●] of [●], or another actuary appointed by the Service Provider and/or relevant Sub-Contractor for the purposes of this annexure 13;
"Transfer Amount"	means the amount or amounts referred to in paragraph 3.1 of this annexure 13;
"Transferring Member"	means an Eligible Employee who agrees to a transfer of benefits being made for him or her from the Fund to the Service Provider's Scheme under paragraph 2.1 of this annexure 13;

#### 2. The Pension Scheme

The Service Provider shall (and shall procure that each relevant Sub-Contractors shall) invite each Eligible Employee who joins the Pension Scheme in accordance with clause 71.5 (*Alternative Pension Scheme*) of this Contract to consent to a transfer of benefits being made for him from the Fund to the Pension Scheme. The Service Provider and/or relevant Sub-Contractors must issue this invitation no later than [one] month after the Relevant Transfer date. The invitation must be in a form acceptable to the Authority and the Administering

Authority (such acceptance not to be unreasonably withheld or delayed by the Authority) and which complies with any requirements of the LGPS Regulations. Any Eligible Employee wishing to consent to a transfer of benefits must notify the Service Provider and/or relevant Sub-Contractors of this consent in writing no later than three months after the date of the invitation. The Service Provider shall (and shall procure that each relevant Sub-Contractor shall) provide the Authority and the Administering Authority with the names of the Transferring Members no later than four months after the Relevant Transfer date.

### **3 Transfer payment from the Fund**

- 3.1 The Authority shall use reasonable endeavours to ensure that the Administering Authority transfers from the Fund to the Pension Scheme on the Due Date an amount in respect of the relevant Transferring Members' service in the Fund before the Relevant Transfer date calculated in accordance with the Actuary's Letter and the LGPS Regulations.
- 3.2 As soon as reasonably practicable following the Relevant Transfer date, the Service Provider shall (and shall procure that each relevant Sub-Contractor shall) promptly provide all data within its possession or under its control which the Administering Authority and the Government Actuary Department 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, the Authority shall promptly provide all data within its possession or under its control which the Administering Authority and the Government Actuary Department 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 Authority shall use its reasonable endeavours to procure that:
  - 3.4.1 as soon as reasonably practicable after the Government Actuary Department has been provided with the necessary data and information, the Government Actuary Department shall calculate the Transfer Amount in accordance with the Actuary's Letter and the LGPS Regulations; and
  - 3.4.2 within [one week] of completing this calculation, the Government Actuary Department shall notify the Service Provider's Actuary in writing of the particulars of the calculation and the data on which the calculation is based.

The Service Provider'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 Service Provider's Actuary raises no objection within this stated period.

- 3.5 If the Service Provider's Actuary objects in writing under paragraph 3.4 of this annexure 13 and the Government Actuary Department and the Service Provider's Actuary cannot subsequently agree the Transfer Amount within [one] month (or such longer period as shall be agreed between the Parties) of the objection, then the amount shall be determined by an independent actuary to be nominated by the Administering Authority and the Service Provider and/or relevant Sub-contractor jointly or, if they cannot agree, by the President of the Institute of Actuaries on application by either Party. The independent actuary shall act as an expert and not as an arbitrator, and his decision shall be final and binding on the Parties. The independent actuary's costs

shall be payable equally by the Administering Authority and the Service Provider and/or relevant Sub-Contractor.

3.6 Payment to the Pension Scheme of the Transfer Amount shall only be made on the following conditions:

3.6.1 the Transfer Amount has been agreed or determined under paragraph 3.4 or 3.5 of this annexure 13 and in accordance with the LGPS Regulations;

3.6.2 the Service Provider and/or relevant sub-contractor has complied with all its obligations under this annexure 13; and

3.6.3 the trustees of the Pension Scheme have confirmed in writing that:

3.6.3.1 a payment should be made in accordance with the LGPS Regulations and that they shall accept payment on the terms set out in paragraph 4 of this annexure 13;

3.6.3.2 they shall accept liability for each Transferring Member's accrued contracted out rights under the Fund; and

3.6.3.3 they shall accept the Transfer Amount in full and final settlement of all claims against the Fund in respect of each Transferring Member.

#### **4 Past service benefits**

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

4.1 the Pension Scheme provides in respect of each Transferring Member such benefits as the Government Actuary Department certifies to be of actuarially equivalent value (in accordance with the Actuary's Letter) to the benefits which would have been payable under the LGPS in respect of the Transferring Member's service before the Relevant Transfer Date if he had remained a member of the LGPS.

4.2 the Transfer Amount will, subject only to any Revenues & Customs limits that may still apply, be wholly applied in the Pension Scheme for the provision of the benefits mentioned in paragraph 4.1 of this annexure 13.

#### **5 Additional voluntary contributions**

Nothing in this annexure 13 shall apply to AVCs or to benefits secured by them. However, the Authority shall use reasonable endeavours to ensure that the assets representing each Transferring Member's AVCs in the Fund (if any) shall be transferred to the Pension Scheme. The Service Provider shall (and shall procure that each relevant Sub-Contractor shall) ensure that the Pension Scheme provides benefits for each relevant Transferring Member which are equivalent to the assets transferred.

#### **6 No assistance**

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

## **7 Exit Provisions**

7.1 The Service Provider undertakes to the Authority (for the benefit of the Authority itself and for the Authority as agent and trustee for the benefit of the Eligible Employees that on:

7.1.1 the expiry or termination of this Agreement; or

7.1.2 the expiry or termination of any Sub-Contract in the case of a relevant Sub-Contractor; or

7.1.3 the employment of any Eligible Employee transferring to a New Employer in accordance with clause 71.16 (*Transfer of Employment of Eligible Employees*) of this Agreement (or otherwise),

the Service Provider shall (and shall procure that each relevant Sub-Contractor shall) procure that the trustees of the Contractor's Scheme offer bulk transfer terms in respect of the relevant Eligible Employees' service in the Pension Scheme to the Fund of the Authority, any New Service Provider (or their Sub-Contractors), any new sub-contractor or any New Employer (as applicable) which are no less favourable (in the opinion of the Government Actuary Department or an actuary appointed by the Authority) than the bulk transfer terms set out in the Actuary's Letter.

7.2 If the transfer payment paid by the trustees of the Pension Scheme is less (in the opinion of the Government Actuary Department or an actuary appointed by the Authority) than the transfer payment which would have been paid had paragraph 7.1 of this annexure 13 been complied with, the Service Provider shall (and/or shall procure that each relevant Sub-Contractor shall) pay to the Authority, any New Service Provider (or their Sub-Contractor), any new sub-contractor or any New Employer (as appropriate) (or as such person shall direct) the amount of the difference.

## **8 Authority's Costs**

Any costs of the Authority necessarily and reasonably incurred in connection with this annexure 13 shall be borne by the Service Provider