

ISLE OF WIGHT COUNCIL – HIGHWAYS PFI
ANNEXURE 9 – PENSIONS ADMISSION AGREEMENT

ANNEXURE 9

Form of Pensions Admission Agreement

THIS AGREEMENT is made on the day of []

BETWEEN:

- (1) **ISLE OF WIGHT COUNCIL** of County Hall, High Street, Newport, Isle of Wight, PO30 1UD (the "**Administering Authority**" and "the Scheme Employer");
- (2) **ISLE OF WIGHT COUNCIL** of County Hall, High Street, Newport, Isle of Wight, PO30 1UD (the "**Scheme Employer**"); and
- (3) [] (company number: []) whose registered office is at [] (the "**Admission Body**")

WHEREAS:

- (a) The Administering Authority is an administering authority within the meaning of the regulation 2 and Schedule 1 of the Administration Regulations.
- (b) The Administering Authority is also the Scheme Employer within the meaning of the Regulations.
- (c) The Admission Body is a transferee admission body specified in Regulation 6 of the Administration Regulations.
- (d) A Contract [exists/will exist] between the Scheme Employer and the Admission Body [resulting/which will result] in the transfer of Employees from the Scheme Employer to the Admission Body on the Transfer Date.
- (e) Under the powers contained in Regulations 6 and 7 and in compliance with Schedule 3 of the Administration Regulations, the terms and conditions of such admission have been agreed between the parties to this Agreement, as set out in this Agreement.
- (f) This Agreement is a closed Admission Agreement and covers only the Eligible Employees who have transferred from the Scheme Employer to the

Admission Body as a result of the Contract and it is not open to the admission of any new or additional employees.

IT IS AGREED as follows:

1. DEFINITIONS

1.1 In this Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

"Administering Authority" means the Isle of Wight Council acting in its capacity as the Administering Authority for the LGPS, or any successor body;

"Administration Regulations" means the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239) as amended;

"Authorised Insurer" means:

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits or to effect and carry out contracts; or
- (b) an EEA firm of the kind mentioned in paragraph 5(b) and (d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits or to effect and carry out contracts of general insurance; or
- (c) a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom;

"Benefits Regulations" means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI 2007/1166) as amended;

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

["Commencement Date"	means [◆];
"Contract"	means a contract [dated] for [] made between the Scheme Employer and the Transferee Admission Body;
"Contract Tasks"	means the tasks which are to be performed by the Admission Body under the [Contract/Sub-contract];
["Effective Date"	means [date] or a date no sooner than the last signatory to this Agreement];
"Eligible Employee"	<p>means an Employee who is designated as such by the Admission Body and who was formerly employed by the Scheme Employer and whose employment [transfers/ transferred] to the Admission Body with effect on and from the [Transfer Date/date of the relevant transfer] as a result of the Contract provided that:</p> <ul style="list-style-type: none"> (a) the Employee otherwise satisfies the requirements of the Regulations relating to eligibility for membership of the Scheme; and (b) the Employee is and remains employed by the Admission Body in connection with the provision of the Services;
"Employee"	means an employee of the Admission Body and includes any officer and "employed" and "employment" will be construed accordingly;
"Fund"	means The Isle of Wight Council Pension Fund;
"Insolvency"	means in relation to the Admission Body is any action or any other steps taken or legal proceedings being taken for its winding-up, dissolution or reorganisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or any of its revenues or assets;

"Indemnity or Bond"	means an indemnity or bond from an Authorised Insurer to meet a level of risk exposure arising on premature termination of the Contract as required following an assessment carried out at the behest of the Scheme Employer;
"LGPS"	means The Local Government Pension Scheme constituted by the Administration Regulations, the Benefit Regulations and the Transitional Regulations;
"Primarily Employed"	means spending more than 50% of an Eligible Employee's time of Employment by the Admission Body on Contract Tasks;
"Registered Pension Scheme"	means a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004;
"Regulations"	means the Administration Regulations, the Benefits Regulations and Transitional Regulations;
["Relevant Date"	means the later of the Effective Date and the relevant Transfer Date];
"Relevant Transfer"	means a relevant transfer as defined by the TUPE Regulations;
"Secretary of State"	means the Secretary of State for Communities and Local Government or such other person to whom responsibilities under the Regulations may be transferred;
"Scheme Member"	means an Eligible Employee who is an active member of the LGPS;
"Services"	means the [] services which are to be provided by the Admission Body under the Contract;
"Service Level Agreement"	means a service level agreement entered into between the Administering Authority and the Admission Body in such form as the Administering Authority may require;

"Sub-contract"	means the contract between a sub-contractor of the Admission Body and the Admission Body dated [◆] pursuant to which the Admission Body is to carry out the Contract Tasks;
"Transitional Regulations"	means the Local Government Pension Scheme (Transitional Provisions) Regulations 2008;
["Transfer Date"	means the date of transfer on which responsibility as Scheme Employer for carrying on the business of the services in question moves from the Scheme Employer to the Admission Body];
"TUPE Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

2. INTERPRETATION

In this Agreement:

- 2.1 expressions have the same meaning as in the Regulations except where the context otherwise requires;
- 2.2 each gender includes all genders;
- 2.3 the singular includes the plural and vice versa;
- 2.4 words preceding "include" "includes" "including" and "included" shall be construed without limitation by the words which follow those words;
- 2.5 a reference to any Clause, Sub-Clause, Schedule or Recital is except where expressly stated to the contrary a reference to such Clause, Sub-Clause, Schedule or Recital of and to this Agreement;
- 2.6 headings in this Agreement are for convenience of reference only and shall not be taken into account in its construction or interpretation;
- 2.7 the Schedules to this Agreement form part of this Agreement;
- 2.8 save where stated to the contrary any reference to this Agreement or to any other document shall include any permitted variation amendment or supplement to this Agreement or to such document; and
- 2.9 any reference to any enactment order regulation or other similar instrument shall be construed as a reference to the enactment order regulation or instrument as amended replaced consolidated or re-enacted.

3. ADMISSION OF ELIGIBLE EMPLOYEES

Admission

- 3.1 Subject to the other terms of this Agreement, the Administering Authority agrees to the participation in the LGPS from the Relevant Date of every Eligible Employee of the Admission Body and the Administering Authority admits the Admission Body to the LGPS as a transferee admission body for the purpose of the Administration Regulations.

Continuation as a Scheme Member

- 3.2 Benefits in respect of the participation of an Eligible Employee in the LGPS will only accrue for so long as each Eligible Employee is Primarily Employed in connection with the Contract Tasks and to the extent permitted by the Regulations.
- 3.3 The Admission Body must as soon as reasonably practicable notify in writing to the Administering Authority whenever an Eligible Employee who is or has been a Scheme Member by virtue of this Agreement ceases to be employed by the Admission Body, or ceases to be Primarily Employed by the Admission Body.
- 3.4 An Eligible Employee will be treated as leaving the LGPS if he ceases to be employed by the Admission Body or ceases to be Primarily Employed by the Admission Body.

ADMISSION BODY OBLIGATIONS

- 4.1 The Admission Body must pay to the Administering Authority for credit to the Fund, in accordance with the Administration Regulations, all contributions and payments which the Admission Body as an employing authority may from time to time be required by or under the Administration Regulations and the Admission Body shall observe and perform all its duties and obligations as an employing authority under and in accordance with the Administration Regulations.
- 4.2 The Admission Body undertakes to indemnify the Administering Authority against any costs and liabilities which they may incur (whether directly or as

a result of a loss [or cost] to the Scheme Members) arising out of or in connection with:

- 4.2.1 the non-payment by the Admission Body of any contributions to the Fund;
 - 4.2.2 any breach by the Admission Body of the Benefits Regulations, Administration Regulations or Transitional Regulations or this Agreement; or
 - 4.2.3 benefits accrued under the LGPS in respect of the Eligible Employees on or after the Transfer Date.
- 4.3 The Admission Body must consult and obtain the written consent of the Scheme Employer (such consent to be at its absolute discretion) before:
- 4.3.1 exercising any discretion which would or might (in the reasonable opinion of the Administating Authority) affect the pensions benefits payable to the Eligible Employees of the Admission Body under the LGPS or the rights of those Eligible Employees to pension benefits under their terms of employment so far as they relate to the LGPS or would or might (in the reasonable opinion of the Scheme Employer) impose or increase any liability, loss or cost on the Scheme Employer, or
 - 4.3.2 creating, reviewing or amending any policies under the Benefits Regulations or Administration Regulations.

5 ADMISSION BODY'S UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES

- 5.1 The Admission Body undertakes to adopt the practices and procedures relating to the operation of the LGPS as set out in or as a result of any one or more of the following:
- 5.1.1 the Administration Regulations; or
 - 5.1.2 any instructions lawfully given by the Administering Authority from time to time in writing.

- 5.2 The Admission Body undertakes to comply with the reasonable requests of the Administering Authority to enable them to comply with the requirements of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996/1655) (as amended or re-enacted).
- 5.3 The Admission Body undertakes to the Administering Authority that it will not do anything to prejudice the status of the LGPS as a Registered Pension Scheme.
- 5.4 The Admission Body undertakes that it will promptly notify the Administering Authority in writing of:
- 5.4.1 any material change in the terms and conditions of employment which will or might affect entitlement to benefits under the LGPS for Scheme Members; and
 - 5.4.2 each occasion when it exercises a discretion under the Regulations in a manner in which it exercises that discretion,
- and will, in each case, pay, as soon as reasonably practicable, such costs of the Administering Authority as may be required in respect of the matters notified.
- 5.5 The Admission Body shall notify the Administering Authority in writing of any Scheme Members that will be taking early retirement, including but not limited to by reason of redundancy, business efficiency, ill health or flexible retirement. Whenever such retirements lead to increased actual or potential liability on the Fund (determination of such occurrence and the effect or potential effect of such occurrence on the actual or potential liabilities on the Fund to be made by the Administering Authority) in respect of benefits payable under the Regulations, the Admission Body shall comply with any written notification from the Administering Authority to pay such sums as may be notified in writing by the Administering Authority as representing the cost of the additional actual or potential liabilities as a result of such benefits, whether payable in one or more instalments of a lump sum amount or as an ongoing increase in the Admission Body's contributions (determined at the discretion of the Administering Authority)

- 5.6 The Admission Body undertakes to notify the Administering Authority of any matter which may affect its participation in the LGPS and to give immediate notice of any actual or proposed change in its status which may give rise to a termination, including (without prejudice to the generality of this clause) any actual or proposed takeover, reconstruction, amalgamation, liquidation or receivership of the Admission Body or any change in the nature of its business or constitution and will promptly pay to the Administering Authority such [costs] as the Administering Authority may require as a result of such a change in status.
- 5.7 The Admission Body warrants to the Administering Authority that an indemnity or bond is in place with effect from and including the date of this Agreement or (if later) the date on which the Scheme Employer determines that such indemnity or bond is required to be in place.

6 BOND

- 6.1 The Scheme Employer, having taken account of appropriate actuarial advice, and having carried out an assessment of the level of risk arising from the premature termination of the provision of service or assets by reason of insolvency, winding up or liquidation in accordance with the Administration Regulations, determines that the level of risk so assessed is such that it requires an indemnity or bond to be maintained by the Admission Body.

OR

INDEMNITY

- 6.1 The Scheme Employer, having taken account of appropriate actuarial advice, and having carried out an assessment of the level of risk arising from the premature termination of the provision of service or assets by reason of insolvency, winding up or liquidation in accordance with the Administration Regulations, does not consider that the level of risk so assessed is such that it requires an indemnity or bond to be maintained by the Admission Body.
- 6.2 Where the Scheme Employer, following the provisions of clause 9.2 at its absolute discretion requires an indemnity or bond to be provided, maintained or varied then the Admission Body warrants to the Scheme Employer that it

will comply with that requirement as notified by the Administering Authority under clause 9.2.

- 6.3 Any indemnity or bond which is required to be maintained in accordance with this Agreement must be sufficient and at such level as the Scheme Employer may determine to cover the risk of any loss or cost to the Scheme Employer or the Administering Authority in respect of membership of the LGPS by the Eligible Employees of the Admission Body (whether on termination of this Agreement or otherwise).

7. REGULATIONS

Without prejudice to the provisions of this Agreement and for the avoidance of doubt the Scheme Employer and the Admission Body undertake to comply with the provisions of regulations 6, 7 and schedule 3 of the Administration Regulations.

8. TERMINATION

- 8.1 The Admission Body will cease to be an Admission Body and this Agreement will terminate on the occurrence of the first of the following events:

- 8.1.1 the completion of three (3) months' written notice given by the Admission Body to the Administering Authority and the Scheme Employer that it wishes to cease to be an Admission Body (pursuant to clause 8.3.1) and both the Administering Authority and Scheme Employer confirms its agreement to that cessation in writing prior to the expiry of the notice period;
- 8.1.2 the termination of the Contract and/or the Sub-contract; or
- 8.1.3 the Admission Body ceasing to be a body as set out in the Administration Regulations,

and in each case the Admission Body undertakes to pay forthwith to the Administering Authority such costs as the Administering Authority may require in connection with that termination.

8.2 The Administering Authority may terminate this Agreement by notification in writing to the Admission Body on the occurrence of the first of the following events:

8.2.1 a breach by the Admission Body of any of its obligations under this Agreement or under the Regulations if that breach is incapable of remedy or is capable of remedy but has not been remedied within a reasonable time (as determined by the Administering Authority, acting reasonably) after the Admission Body has been notified of the breach;

8.2.2 a failure by the Admission Body to pay such sums due to the Fund within a reasonable period (as determined by the Administering Authority, acting reasonably) after receipt of a written notice from the Administering Authority requiring it to do so; or

8.2.3 the Insolvency of the Admission Body;

and when the Administering Authority does notify the Admission Body it shall at the same time notify the Scheme Employer in writing of its notice of termination to the Admission Body.

8.3 The Admission Body must notify the Administering Authority immediately in writing if:

8.3.1 it wishes to cease to be an Admission Body for the purposes of the Administration Regulations;

8.3.2 it is aware that it will cease to be an Admission Body under the Administration Regulations whether as a result of the operation of clause 8.1.3 or otherwise; or

8.3.3 it is aware that Insolvency proceedings have been threatened or are likely to be threatened.

8.4 If the Admission Body ceases to be an Admission Body under clauses 8.1 or 8.2:

8.4.1 its Eligible Employees shall immediately cease to be Scheme Members;

8.4.2 it shall pay forthwith to the Administering Authority any costs which may be required by the Administering Authority; and

8.4.3 the Administering Authority must immediately notify the affected members of the LGPS and the Secretary of State,

PROVIDED THAT for the avoidance of doubt, any payment under this clause 8.4 and any termination of this Agreement is without prejudice to:

8.4.4 any on-going liability of the Admission Body under the Benefits Regulations or Administration Regulations after the cessation of this Agreement; and

8.4.5 to any payment due or claim arising under this Agreement prior to such termination.

9. FUNDING THE LGPS

9.1 Without prejudice to any powers set out in the Benefits Regulations and the Administration Regulations, the Administering Authority may at any time require a review of the funding of the Fund in relation to the Admission Body. The Administering Authority may, after considering actuarial advice, adjust the contributions due by the Admission Body as it may deem necessary.

9.2 Without prejudice to any powers set out in the Benefits Regulations and Administration regulations, the Scheme Employer may:

9.2.1 require a review of the funding of the Fund in relation to the Admission Body; or

9.2.2 review the indemnity or bond arrangements set out in clause 6,

and in each case must notify the Administering Authority of its exercise of the provisions of this clause 9.2 and of its findings. The Administering Authority may, after considering the Scheme Employer's findings and where appropriate actuarial advice, adjust the contributions due by the Admission Body as it may deem necessary. If the Scheme Employer requests the Admission Body to provide or vary the level of the indemnity or bond required under clause 6 as the Scheme Employer may deem necessary.

10. NOTICES

10.1 All notices under this Agreement shall be in writing and shall be served by sending the same by first class post or by hand or leaving the same at the registered office of the Admission Body or the headquarter address of the Administering Authority or the Scheme Employer or the office of the Secretary of State (as the case may be).

10.2 Any notice to be given under this Agreement shall be in writing and shall be deemed to be sufficiently served on the Administering Authority and the Admission Body if addressed as stated at the beginning of this Agreement (unless a party notifies the others in writing of a different address for service) if delivered by hand or sent by prepaid first class post and shall be deemed to have been given or made:

10.2.1 if delivered by hand upon delivery at the address unless such delivery occurs on a day which is not a Business Day or after 4pm on a Business Day in which case it will be deemed to have been given at 10am on the next Business Day; or

10.2.2 if sent by prepaid first class post on the second Business Day after the date of posting.

11 DISPUTES

11.1 Any question which may arise between the parties to this Agreement relating to the construction of this Agreement or the rights and obligations under it that cannot be resolved by negotiation shall be referred in writing for determination to the Secretary of State

12 AMENDMENT

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

12.1.1 the amendment is not such that it would breach the Regulations or any other legal or regulatory requirements applicable to the LGPS;
and

12.1.2 the amendment would not prejudice the status of the LGPS as a Registered Pension Scheme.

13 SEVERANCE

13.1 If any provision of or period of LGPS membership under this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable such invalidity or unenforceability shall not affect the other provisions of or periods of LGPS membership under this Agreement which shall remain in full force and effect.

13.2 If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

14 ENTIRE AGREEMENT

14.1 Except where expressly provided this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations communications negotiations and understandings concerning the subject matter of this Agreement.

15 RIGHTS OF THIRD PARTIES

15.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

16 PUBLIC INSPECTION

16.1 This Agreement shall be made available for public inspection by the Administering Authority at its appropriate office.

17. COUNTERPARTS

17.1 This Agreement may be executed in any number of counterparts and this shall have the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

18. GOVERNING LAW

18.1 This Agreement shall be governed by and construed in accordance with English law and subject to clause 11 (*Disputes*) the parties submit to the jurisdiction of the English courts.

IN WITNESS whereof the parties have executed and delivered this Agreement as a Deed on the day and year first before written.

THE COMMON SEAL of)
Isle of Wight Council)
(as Administering Authority))
was affixed in the presence of:)

Authorised Officer

THE COMMON SEAL of)
Isle of Wight Council)
(as Scheme Employer))
was affixed in the presence of:)

Authorised Officer

EXECUTED AS A DEED by:)
[])
acting by a Director and its)
Secretary or two Directors)

Director/Company Secretary

Director