

**Schedule 22**

**Bulk Transfer Terms**

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1 Interpretation and Definitions

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

<b>Actuary's Letter</b>	means the letter from the Administering Authority's Actuary, a copy of which has been attached to this Schedule <sup>2</sup> ;
<b>Administering Authority's Actuary</b>	means [name of actuary] of [name of firm], or another actuary appointed by the Administering Authority for the purposes of this Schedule;
<b>AVCs</b>	means AVCs or SCAVCs as defined in the LGPS Regulations;
<b>Contractor's Actuary</b>	means [name of actuary] of [name of firm], or another actuary appointed by the Contractor and/or relevant sub-contractor for the purposes of this Schedule;
<b>Contractor's Scheme</b>	means the pension scheme or schemes nominated by the Contractor and/or relevant sub-contractor in accordance with clause 31.7 (Contractor Scheme) of this Agreement;
<b>Due Date</b>	means the date [ ] days after the last of the conditions in paragraph 3.6 (Transfer payment from the Fund) of this Schedule has been satisfied;
<b>Fund</b>	means the [ ] Fund within the LGPS;
<b>Transfer Amount</b>	means the amount or amounts referred to in paragraph 3.1 (Transfer payment from the Fund) of this Schedule;

<sup>1</sup> Requirements relating to bulk transfer provisions are contained in HM Treasury Guidance 'Staff Transfers From Central Government: A Fair Deal for Staff Pensions' (June 1999) and HM Treasury Guidance 'A Fair Deal For Staff Pensions: Procurement of Bulk Transfer Arrangements and Related Issues' (June 2004). This Schedule is provided as a specimen only and Authorities are advised to liaise with the Administering Authority of the relevant LGPS fund (where different from the Authority) and its own advisers as early as possible to agree the provisions of the Schedule. The Administering Authority may have a preferred form of Schedule it would prefer to use or may have specific amendments that it would wish to make to this specimen Schedule. The Authority should also check that the Schedule complies with the bulk transfer provisions contained in the LGPS Regulations in force at the time the Agreement is signed.

<sup>2</sup> The Actuary's Letter should set out fully and clearly the bulk transfer assumptions and adjustments and be made available to all qualified bidders at the earliest possible stage in the process. The Actuary's Letter should represent a reasonable final position rather than an opening position for further negotiation. Compliant bids should be on the basis that the Contractor's Scheme will accept the bulk transfer terms set out in the Actuary's Letter and any costs or benefits conferred by the acceptance of those terms should be dealt with by way of a price adjustment set out in the bid documentation and supported by a reasoned statement of need. Where there is uncertainty regarding the size of the bulk transfer, for example where large numbers of staff are potentially involved, the HM Treasury Guidance "A Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues" suggests that bids could be made which are contingent on the size of the bulk transfer value which is eventually calculated. In such cases, it may be necessary to agree a mechanism in the Agreement by which the contract price can be adjusted to reflect the value of the transfer amount which results from the level of take up by staff.

### **Transferring Member**

means an Eligible Employee who agrees to a transfer of benefits being made for him or her from the Fund to the Contractor's Scheme under paragraph 2 (The Contractor's Scheme) of this Schedule.

## **2 The Contractor's Scheme**

The Contractor shall (and shall procure that each relevant sub-contractor shall) invite each Eligible Employee who joins the Contractor's Scheme in accordance with clause 31.7.1 (Contractor Scheme) of this Agreement to consent to a transfer of benefits being made for him from the Fund to the Contractor's Scheme. The Contractor and/or relevant sub-contractor must issue this invitation no later than [one] month after the Relevant Transfer Date<sup>3</sup>. 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 Contractor and/or relevant sub-contractor of this consent in writing no later than [three]<sup>4</sup> months after the date of the invitation. The Contractor 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 Contractor's 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 Contractor 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 Administering Authority'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, the Authority shall promptly provide all data within its possession or under its control which the Administering Authority and the Administering Authority'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 Authority shall use its reasonable endeavours to procure that:
  - 3.4.1** as soon as reasonably practicable after the Administering Authority's Actuary has been provided with the necessary data and information, the Administering Authority's Actuary shall calculate the Transfer Amount in accordance with the Actuary's Letter and the LGPS Regulations; and

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<sup>3</sup> This Schedule is drafted on the assumption that the bulk transfer takes place following a Relevant Transfer Date. The Schedule does not provide for a bulk transfer following a Cessation Date (when the Contractor or the relevant Sub-Contractor ceases to be an Admission Body in the LGPS and provides a broadly comparable pension scheme as an alternative pension provision) because of the uncertain nature of a Cessation Date. If the Authority wishes the Schedule to apply in the event of a Cessation Date then appropriate amendments to the Schedule will be required and consideration will need to be given regarding the open-ended nature of the Actuary's Letter.

<sup>4</sup> Three months is the decision period referred to in the HM Treasury Guidance 'A Fair Deal for Staff Pensions : Procurement of Bulk Transfer Agreements and Related Issues'.

**3.4.2** within [one week] of completing this calculation, the Administering Authority's Actuary shall notify the Contractor's Actuary in writing of the particulars of the calculation and the data on which the calculation is based.

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

**3.5** If the Contractor's Actuary objects in writing under paragraph 3.4 of this Schedule and the Administering Authority's Actuary and the Contractor'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 Contractor 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 Contractor and/or relevant sub-contractor.

**3.6** Payment to the Contractor's Scheme of the Transfer Amount shall only be made on the following conditions<sup>5</sup>:

**3.6.1** the Transfer Amount has been agreed or determined under paragraph 3.4 or 3.5 (Transfer payment from the Fund) of this Schedule and in accordance with the LGPS Regulations;

**3.6.2** the Contractor and/or relevant sub-contractor has complied with all its obligations under this Schedule; and

**3.6.3** the trustees of the Contractor's 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 (Past service benefits) of this Schedule;

**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.

**3.7** [The payment of the Transfer Amount shall be satisfied by the transfer of readily marketable stocks and shares of the Fund as agreed by the Administering Authority and the trustees of the Contractor'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 Contractor'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,

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<sup>5</sup> The Authority may wish to consider whether it wants to seek to ring-fence any Transfer Amount within the Contractor's Scheme. The Authority should consult with its professional advisers regarding this option.

the payment of the Transfer Amount (or the appropriate part of it) shall be satisfied by the Fund transferring cash equal to [ ]% of that part of the Transfer Amount in respect of which there has been no agreement as to the assets to be transferred.]<sup>6</sup>

#### 4 Past service benefits

The Contractor shall (and shall procure that each relevant sub-contractor shall) ensure that the Contractor's Scheme provides in respect of each Transferring Member such benefits as the Administering Authority's Actuary certifies to be of actuarially equivalent value [(in accordance with the Actuary's Letter)]<sup>7</sup> 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.

#### 5 Additional voluntary contributions

Nothing in this Schedule shall apply to AVCs or to benefits secured by them. However, the Authority must ensure that the assets representing each Transferring Member's AVCs in the Fund (if any) shall be transferred to the Contractor's Scheme. The Contractor shall (and shall procure that each relevant sub-contractor shall) ensure that the Contractor's Scheme provides benefits for each relevant Transferring Member which are equivalent to the assets transferred.

#### 6 No assistance

The Contractor 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 Contractor's Scheme in respect of the Transferring Members.

#### 7 Exit Provisions<sup>8</sup>

**7.1** The Contractor 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]<sup>9</sup>) 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

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<sup>6</sup> The form of payment and discount for cash needs to be discussed with the Administering Authority. If this is to be covered in the Actuary's Letter, this clause can be deleted.

<sup>7</sup> It may be necessary to refer to the Actuary's Letter to determine what 'actuarially equivalent value' means. 'Actuarially equivalent value' is the term used in the HM Treasury Guidance 'A Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues'.

<sup>8</sup> The exit provisions aim to reflect as far as possible the exit requirements of HM Treasury Guidance 'A Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues'. The Authority should consult with its professional advisers regarding these provisions and the Guidance and the requirements it wishes to impose.

<sup>9</sup> The Authority will need to consider whether, in light of the HM Treasury Guidance 'A Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues', it wants the exit provisions to cover the Transferring Members, the Eligible Employees or wider still the Returning Employees who are members of the Contractor's Scheme.

- 7.1.3** the employment of any [Eligible Employee] transferring to a New Employer in accordance with clause 31.12 (Transfer to another Employer) of this Agreement (or otherwise),

the Contractor 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 Contractor's Scheme to the pension scheme of the Authority, any Future Contractor (or their sub-contractors), any new sub-contractor or any New Employer (as applicable) which are no less favourable (in the opinion of the Administering Authority's Actuary or an actuary appointed by the Authority) than the bulk transfer terms set out in the Actuary's Letter. In addition to this, the Contractor shall procure that the new Employer complies with the requirements of paragraph 4.1 (Past service benefits) of this Schedule.

- 7.2** If the transfer payment paid by the trustees of the Contractor's Scheme is less (in the opinion of the Administering Authority's Actuary or an actuary appointed by the Authority) than the transfer payment which would have been paid had paragraph 7.1 (Exit Provisions) of this Schedule been complied with, the Contractor shall (and/or shall procure that each relevant sub-contractor shall) pay to the Authority, any Future Contractor (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.<sup>10]</sup>

## **8 Authority's Costs**

Any costs of the Authority necessarily and reasonably incurred in connection with this Schedule shall be borne by the Contractor.

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<sup>10</sup> HM Treasury have indicated that the exit provisions in HM Treasury Guidance 'A Fair Deal for Staff Pensions : Procurement of Bulk Transfer Agreements" may cover not only Transferring Members but also Eligible Employees who did not transfer their benefits from the LGPS under the initial bulk transfer but did join the Contractor's Scheme for future service only. The Authority should consult with its professional advisers regarding the scope of the employees it wishes to protect under this paragraph.