

Dated

2021

- (1) WOLVERHAMPTON CITY COUNCIL
- (2) THE BOROUGH COUNCIL OF SANDWELL
- (3) MELLORS CATERING SERVICES LIMITED

Admission Agreement

To participate in the Local Government Pension Scheme
relating to services provided to [school(s)]

Pass-through Arrangements Version

CONTENTS

Clause	Page
1	INTERPRETATION1
2	THE REGULATIONS.....3
3	COMMENCEMENT DATE3
4	MEMBERSHIP OF ELIGIBLE EMPLOYEES3
5	ADMISSION BODY UNDERTAKINGS4
5.1	Payments and costs4
5.2	Discretions5
5.3	Additional pension5
5.4	Matters affecting participation5
6	CONTRIBUTIONS AND PAYMENTS6
6.1	Contributions to the Fund6
6.2	Due date for payment7
6.3	Information about pay and contributions7
6.4	Interest on late payment8
6.5	Adjustment of contribution rate8
6.6	Right of set-off9
7	TERMINATION9
7.1	Termination by notice9
7.2	Automatic termination9
7.3	Immediate termination by the Administering Authority9
7.4	Other outstanding payments on termination9
7.5	Rights on termination10
8	RISK ASSESSMENT10
8.1	Initial level of risk exposure10
8.2	Provision of bond, indemnity or guarantee10
9	INDEMNITY FROM ADMISSION BODY10
10	GUARANTEE FROM SCHEME EMPLOYER10
10.1	Failure to pay Scheme liabilities10
10.2	Service of Payment Notice and payment11
10.3	Sums paid by the Scheme Employer11
10.4	Receipt of payment11
10.5	Further Payment Notice11
10.6	Obligations and liabilities11
10.7	Change in status11
10.8	Warranty of authority11
10.9	Expiry date12
11	NOTICES12
12	WAIVER12
13	SEVERANCE12
14	ENTIRE AGREEMENT13
15	AMENDMENT13
16	PUBLIC INSPECTION13
17	MORE THAN ONE COUNTERPART13
18	LAWS13

Schedule

Eligible Employees..... **Error! Bookmark not defined.**

This Agreement is made on the

day of

2021

Between:

- (1) **WOLVERHAMPTON CITY COUNCIL** of Civic Centre, St Peter's Square, Wolverhampton WV1 1RG (the "**Administering Authority**");
- (2) **THE BOROUGH COUNCIL OF SANDWELL** of Sandwell Council House, Freeth Street, Oldbury, B69 9EX (the "**Scheme Employer**"); and
- (3) **MELLORS CATERING SERVICES LIMITED** (company number: 07717083) whose registered office is at West Lancs Technology Management Centre White Moss Business Park, Moss Lane View, Skelmersdale, England, WN8 9TN (the "**Admission Body**").

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, and has the delegated function of making determinations under section 25(5) of the Public Service Pensions Act 2013 in relation to employees of admission bodies.
- (B) The Scheme Employer is a Scheme employer within the meaning of the Regulations.
- (C) The Scheme Employer and the Admission Body entered into the Contract.
- (D) In accordance with paragraph 1(d)(i) of Part 3 of Schedule 2 to the 2013 Regulations and as a result of the Contract, the Admission Body will provide services or assets in connection with the exercise of a function of the Scheme Employer.
- (E) The Administering Authority, the Scheme Employer and the Admission Body 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 be members of the Scheme.
- (F) The terms and conditions of such admission have been agreed by the parties to this Agreement as follows.

NOW IT IS AGREED as follows:

1. **INTERPRETATION**

This Clause sets out the definitions and rules of interpretation which apply to the Agreement.

1.1 The following expressions have the following meanings:

"2013 Regulations"	the Local Government Pension Scheme Regulations 2013.
"Actuary"	an actuary appointed by the Administering Authority.
"Business Day"	any day other than a Saturday or a Sunday or a Public or Bank Holiday in England.
"Commencement Date"	1 September 2021.
"Contract"	a contract dated [insert date contract was completed] between the Scheme Employer and the Admission Body to provide the Services which is anticipated to expire on 31 August 2021. Where the

Administering Authority so agrees in writing, the term "Contract" will also include any extension, renewal or replacement of that contract which is in force beyond the expiry date of the original contract, provided that it is made between the same parties and relates to the same or substantially the same services.

"Eligible Employee"	an employee of the Admission Body who is listed in the Schedule.
"Fund"	The West Midlands Metropolitan Authorities Pension Fund.
"Member"	an Eligible Employee who joins the Scheme as an active member and who remains an active member or subsequently becomes a deferred member or a pensioner member. Where applicable, this term also includes a Member's spouse, civil partner, cohabiting partner, eligible child or dependant whether actual or prospective.
"Payment Notice"	is defined at Clause 10.2 (Service of payment notice and payment)
"Registered Pension Scheme"	a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.
"Regulations"	the 2013 Regulations and the Transitional Regulations.
"Scheme"	the Local Government Pension Scheme established and governed by the Regulations.
"Scheme Year"	a year beginning on a 1 April and ending on the next 31 March.
"Services"	the catering services which are to be provided to [school(s)] by the Admission Body under the Contract.
"Transitional Regulations"	the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.

- 1.2 Unless the Administering Authority agrees otherwise, the expression "employed in connection with the provision of the Services" means that an Eligible Employee spends on average in a Scheme Year at least 75% of his time working on the Services.
- 1.3 Expressions have the same meaning as in the Regulations except where the context otherwise requires.
- 1.4 This Agreement includes a heading and a box at the start of each Clause which outlines its provisions. These are included for information only.
- 1.5 Any reference in this Agreement to any statute or statutory provision includes any subordinate legislation made under it and is to be construed as a reference to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

- 1.6 Words such as “in particular”, “includes” or “including” do not limit the generality of the words preceding them.

2. **THE REGULATIONS**

This Clause sets out the relationship between the Agreement and the Regulations.

- 2.1 Subject to **Clause 6** (Contributions to the Fund), in the event of a conflict between the provisions of this Agreement and the Regulations, the rights, obligations and actions of each party to this Agreement will be determined by the Regulations.

- 2.2 The Admission Body undertakes to:

- 2.2.1 adopt the practices and procedures relating to the operation of the Scheme set out in the Regulations and in any employer’s guide and service-level agreement published by the Administering Authority and provided to the Admission Body;
- 2.2.2 inform the Administering Authority promptly in writing of all decisions made by the Admission Body concerning Members under regulation 72 of the 2013 Regulations;
- 2.2.3 provide (or procure to be provided) promptly all information that the Administering Authority reasonably requests in order to discharge its Scheme functions in accordance with the Regulations and to comply with any other legal or regulatory requirements applicable to the Scheme; and
- 2.2.4 meet the relevant requirements of the Regulations.

- 2.3 The Regulations will apply to the Admission Body and to employment with the Admission Body in which an Eligible Employee is an active member of the Scheme in the same way as if the Admission Body were a Scheme employer listed in Part 2 of Schedule 2 to the 2013 Regulations.

3. **COMMENCEMENT DATE**

This Clause sets out the date the Agreement commences.

This Agreement has effect on and from the Commencement Date.

4. **MEMBERSHIP OF ELIGIBLE EMPLOYEES**

This Clause sets out the terms on which the Eligible Employees are admitted to membership of the Scheme.

- 4.1 Subject to the terms of this Agreement, the Administering Authority admits the Admission Body to the Scheme with effect on and from the Commencement Date and (in exercise of the function delegated to it under section 25(5) of the Public Service Pensions Act 2013) determines that the Scheme relates to those employees of the Admission Body who are designated by the Admission Body in accordance with **Clause 4.2** (Membership of eligible employees).
- 4.2 Subject to the following provisions of this **Clause 4** (Membership of eligible employees), the Admission Body designates an Eligible Employee listed in the Schedule as being eligible to remain or become an active member of the Scheme. The designation is effective on and from the Commencement Date.

- 4.3 Notwithstanding the provisions of **Clause 4.2** (Membership of eligible employees), an Eligible Employee will cease to be an active member in the circumstances set out in regulation 5 of the 2013 Regulations.
- 4.4 An Eligible Employee may not be an active member of the Scheme if he is an active member of another occupational pension scheme (within the meaning of section 1 of the Pension Schemes Act 1993) in relation to the employment in respect of which he would otherwise be eligible to be designated for Scheme membership, or if he otherwise fails to satisfy the eligibility requirements of the 2013 Regulations.
- 4.5 An Eligible Employee may only be an active member of the Scheme by virtue of this Agreement if and for so long as he is employed in connection with the provision of the Services.
- 4.6 In respect of each Member, the Admission Body must promptly notify the Administering Authority in writing of:
- 4.6.1 any change in employment which results in an Eligible Employee who is an active member ceasing to be employed in connection with the provision of the Services;
 - 4.6.2 any Eligible Employee who joins or re-joins the Scheme;
 - 4.6.3 any material change to a Member's terms and conditions of employment which affects the Member's entitlement to benefits under the Scheme; and
 - 4.6.4 any termination of employment, including termination by virtue of redundancy, business efficiency, ill-health or other early retirement.

5. **ADMISSION BODY UNDERTAKINGS**

This Clause sets out the undertakings to be given by the Admission Body to the Administering Authority.

5.1 **Payments and costs**

- 5.1.1 Without prejudice to **Clause 6** (Contributions and payments), the Admission Body must pay to the Administering Authority all contributions and payments due under the Regulations and this Agreement (including, for the avoidance of doubt, all contributions and payments due in respect of any period from the Commencement Date until the date of this Agreement).
- 5.1.2 The Admission Body must pay on demand to the Administering Authority any costs (including actuarial and other professional costs) which the Fund or the Administering Authority may incur in relation to this Agreement including the costs of any actuarial work commissioned by the Admission Body for the purposes of this Agreement or otherwise.
- 5.1.3 Any demand under **Clause 5.1.2** (Payments and costs) must be paid by the Admission Body to the Administering Authority within 10 Business Days of receipt by the Admission Body of such demand.
- 5.1.4 For the avoidance of doubt, any actuarial costs incurred periodically during the term of this Agreement that are properly regarded as part of the triennial valuations of the Fund required under the 2013 Regulations will be the responsibility of the Administering Authority.

5.2 Discretions

- 5.2.1 Within three months of the Commencement Date (or of the date of this Agreement, if later), the Admission Body must provide the Administering Authority with a statement of the Admission Body's policies concerning the exercise of its functions under regulations 16(2)(e), 16(4)(d), 30(6), 30(8) and 31 of the 2013 Regulations. The statement must follow the form of statement prescribed by the Administering Authority from time to time. The Admission Body must keep these policies under review. Where the Admission Body determines to revise any of its policies, the Admission Body must publish the revised statement and send a copy of it to the Administering Authority within one month of the determination.
- 5.2.2 The Admission Body must notify the Administering Authority and the Scheme Employer promptly in writing of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion.

5.3 Additional pension

- 5.3.1 The Admission Body must not resolve to award a Member additional pension under regulation 31 of the 2013 Regulations unless either:
- 5.3.1.1 the Administering Authority and the Admission Body agree that the Admission Body will pay increased contributions to meet the cost of the additional pension; or
 - 5.3.1.2 the Admission Body pays the sum required under regulation 68(3) of the 2013 Regulations to the Administering Authority for credit to the Fund.
- 5.3.2 The Admission Body must pay to the Fund the amount of any extra charge on the Fund arising as a result of the resolution which has not been discharged by payments made in accordance with **Clauses 5.3.1.1** or **5.3.1.2** (Additional pension).

5.4 Matters affecting participation

- 5.4.1 The Admission Body must notify the Administering Authority and the Scheme Employer promptly in writing of any matter which may affect or is likely to affect its participation in the Scheme.
- 5.4.2 The Admission Body must notify the Administering Authority and the Scheme Employer immediately in writing of any actual or proposed change in its status, including take-over, change of control, reconstruction, amalgamation, insolvency, winding up, liquidation or receivership or a material change to its business or constitution. In the event of any such actual or proposed change in its status, the Admission Body must not make any representations to any Member or body regarding continued membership of the Scheme without the prior written consent of the Administering Authority.
- 5.4.3 The Admission Body must not do anything (or omit to do anything) where such act or omission would or might prejudice the status of the Scheme as a Registered Pension Scheme.

6. CONTRIBUTIONS AND PAYMENTS

This Clause sets out the contributions and payments to the Fund to be made by the Admission Body.

6.1 Contributions to the Fund

The Admission Body must pay to the Fund in relation to the Members:

- 6.1.1 employer contributions at the same primary rate of pensionable pay as is applicable to the Scheme Employer under the rates and adjustments certificate for the Scheme Employer. This amount will be payable monthly in arrears no later than the date specified by the Administering Authority or in accordance with any other terms of the rates and adjustments certificate;
- 6.1.2 all amounts from time to time deducted from the pay of the Members under the Regulations (including, for the avoidance of doubt, all amounts deducted for any period from the Commencement Date until the date of this Agreement which remain unpaid at the date of this Agreement). These will be payable monthly in arrears no later than the date specified by the Administering Authority and in any event no later than the time required under section 49(8) of the Pensions Act 1995 (and where amounts deducted for any period from the Commencement Date until the date of this Agreement remain unpaid at the date of this Agreement, such amounts are to be treated for the purposes of section 49(8) as if first deducted on the date of this Agreement);
- 6.1.3 any amount received by the Admission Body by deduction or otherwise under regulations 12, 13, 14, 16 and 17 of the 2013 Regulations (including, for the avoidance of doubt, all amounts for any period from the Commencement Date until the date of this Agreement which remain unpaid at the date of this Agreement);
- 6.1.4 any sum or any extra charge payable under **Clauses 5.3.1.2 and 5.3.2** (Additional pension) respectively;
- 6.1.5 any extra charge required by the Administering Authority to cover the actuarial strain on the Fund (as notified by the Actuary in writing) as a result of the immediate payment of benefits when:
 - 6.1.5.1 a Member who is an active member of the Scheme has his employment with the Admission Body terminated on grounds of ill-health or infirmity of mind or body which renders him both permanently incapable of discharging efficiently the duties of his current employment and not immediately capable of undertaking any gainful employment; or
 - 6.1.5.2 a Member who became a deferred member of the Scheme on leaving his employment with the Admission Body receives payment of his benefits immediately on grounds of ill-health or infirmity of mind or body which renders him both permanently incapable of discharging efficiently the duties of that employment and unlikely to be capable of undertaking gainful employment before normal pension age, or for at least three years, whichever is the sooner;
- 6.1.6 any extra charge required by the Administering Authority to cover the actuarial strain on the Fund (as notified by the Actuary in writing) as a result of:
 - 6.1.6.1 the immediate payment of benefits when the Admission Body dismisses a Member who is an active member of the Scheme by reason of redundancy or business efficiency or where such a

Member's employment is terminated by mutual consent on the grounds of business efficiency; or

6.1.6.2 the immediate payment of benefits under regulation 30(5) of the 2013 Regulations or (with the Admission Body's consent) under regulation 30(6) of the 2013 Regulations, including in either case the costs of the Admission Body waiving any reduction of benefits under regulation 30(8) of the 2013 Regulations;

6.1.7 any contribution (not being one required under **Clause 6.1.1** (Contributions to the fund)) required by the Administering Authority towards the cost of the Fund's administration relating to the Admission Body, including an amount specified in a notice given by the Administering Authority under regulation 70 of the 2013 Regulations and the costs of any reports and advice requested by the Admission Body from the Actuary or required in respect of the Admission Body's application to become an Admission Body;

6.1.8 any interest payable under the Regulations; and

6.1.9 any other payments or contributions required by the Regulations or by any other legislation.

6.2 **Due date for payment**

Except where this Agreement, the Regulations or any other relevant legislation expressly requires otherwise, any amount which the Admission Body is required to pay by virtue of **Clauses 5.1** (Payments and costs) and **6.1** (Contributions to the fund) must be paid to the Fund within 20 Business Days of receipt by the Admission Body from the Administering Authority of written notification of the sum or (where relevant) of any revised rates and adjustments certificate, or within such other period and on such terms as the Administering Authority and the Admission Body may agree.

6.3 **Information about pay and contributions**

6.3.1 Any payments made by the Admission Body under **Clauses 6.1.2** and **6.1.3** (Contributions to the fund) must be accompanied by a statement (given in such form and at such intervals as the Administering Authority specifies) showing the following information for each Member who was an active member of the Scheme during all or part of the period covered by the statement:

6.3.1.1 name and contribution band;

6.3.1.2 details of any period(s) falling within the period to which the statement relates in relation to which an election was in force in respect of the active Member under regulation 10 of the 2013 Regulations (temporary reduction in contributions);

6.3.1.3 total pensionable pay received by the Member (including any assumed pensionable pay the Member is treated as having received);

6.3.1.4 total employee contributions deducted from that pensionable pay;

6.3.1.5 total employer contributions in respect of that pensionable pay;

6.3.1.6 total additional contributions paid by the Member (distinguishing additional pension contributions paid under regulation 16 of the 2013 Regulations and additional voluntary contributions paid under regulation 17 of the 2013 Regulations);

- 6.3.1.7 total additional contributions paid by the Admission Body (distinguishing additional pension contributions paid under regulation 16 of the 2013 Regulations and additional voluntary contributions paid under regulation 17 of the 2013 Regulations); and
 - 6.3.1.8 such other information as the Administering Authority may require (including any information from time to time required to calculate benefits for the Member in accordance with the provisions of the Transitional Regulations).
- 6.3.2 Where an election was in force in respect of the active Member under regulation 10 of the 2013 Regulations during any part of the period to which the statement required under **Clause 6.3.1** relates, the information provided under **Clauses 6.3.1.3, 6.3.1.4 and 6.3.1.5** must be provided separately in respect of:
- 6.3.2.1 the period (or, if more than one, the aggregate of such periods) during which the election was in force; and
 - 6.3.2.2 any period (or, if more than one, the aggregate of such periods) during which no election was in force.
- 6.3.3 Any question concerning what rate of contribution a Member is liable to pay to the Fund must be decided by the Admission Body.

6.4 **Interest on late payment**

If any sum payable by the Admission Body under the Regulations or this Agreement remains unpaid, the Administering Authority may require the Admission Body to pay interest on the unpaid sum in accordance with regulation 71 of the 2013 Regulations.

6.5 **Adjustment of contribution rate**

- 6.5.1 Pursuant to regulation 64(1) of the 2013 Regulations and regulation 25A of the Transitional Regulations, but subject to any exercise by the Administering Authority of its power to issue a suspension notice under regulation 64(2A) of the 2013 Regulations, where this Agreement terminates in accordance with **Clause 7** (Termination) or the Admission Body no longer employs an active member contributing to the Fund:
 - 6.5.1.1 subject to any outstanding requirements to make payments under **Clauses 6.1.4, 6.1.5 and 6.1.6**, the parties agree that the assets and liabilities of the Admission Body under this Agreement shall be subsumed within the Fund by the Scheme Employer so that no exit payment will be due from, and no exit credit will be payable to, the Admission Body. Instead, the Administering Authority may obtain a further revision of the Scheme Employer's rates and adjustments certificate showing the revised contributions (if any) due from the Scheme Employer in respect of such assets and liabilities, and the Scheme Employer will correspondingly be entitled to benefit from any surplus within the Fund relating to those assets and liabilities; and
 - 6.5.1.2 if, pursuant to the 2013 Regulations, the Administering Authority is required to pay an exit credit to the Admission Body, the Admission Body must reimburse that exit credit to the Fund, and the reimbursed amount will be credited to the Scheme Employer.

6.6 **Right of set-off**

Notwithstanding any terms to the contrary contained in the Contract, if any sum payable by the Admission Body under the Regulations or this Agreement has not been paid by the date on which it becomes due then the Administering Authority may require the Scheme Employer to set off against any payments due to the Admission Body an amount equal to the sum due (including any interest payable) and pay the sum to the Fund by a date specified by the Administering Authority.

7. **TERMINATION**

This Clause sets out the ways in which the Admission Body and the Administering Authority may terminate the Agreement.

7.1 **Termination by notice**

Subject to **Clauses 7.2** (Automatic termination) and **7.3** (Immediate termination by the administering authority), the Administering Authority or the Admission Body may terminate this Agreement by giving at least three months' notice of termination in writing to the other parties to this Agreement.

7.2 **Automatic termination**

This Agreement will automatically terminate on the earlier of:

- 7.2.1 the date of expiry or earlier termination of the Contract; or
- 7.2.2 the date the Admission Body otherwise ceases to be an admission body for the purposes of the Regulations.

7.3 **Immediate termination by the Administering Authority**

The Administering Authority may terminate this Agreement with immediate effect by notice in writing to the Admission Body:

- 7.3.1 where the Admission Body breaches any of its obligations under this Agreement (including, for the avoidance of doubt, where the Admission Body fails to pay any sums due to the Fund or where the Admission Body fails to renew or adjust the level of the bond, indemnity or guarantee (if required) in accordance with **Clause 8** (Risk assessment)). If the breach is capable of remedy, the Administering Authority must first give the Admission Body the opportunity of remedying the breach within such reasonable period as the Administering Authority may specify;
- 7.3.2 on the insolvency, winding up or liquidation of the Admission Body;
- 7.3.3 where the continued participation of the Admission Body in the Scheme would or might prejudice the status of the Scheme as a Registered Pension Scheme; or
- 7.3.4 if the Admission Body no longer employs an active member contributing to the Fund.

7.4 **Other outstanding payments on termination**

Where any contributions, payments or other sums due under this Agreement or the Regulations (including any payments by instalments agreed under **Clause 6** (Contributions and payments)) remain outstanding on the termination of this Agreement, the Admission Body must pay them in full within 20 Business Days of the date of termination.

7.5 **Rights on termination**

The termination of this Agreement does not affect the rights, duties and liabilities of any party accrued prior to such termination. The Clauses of this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

8. **RISK ASSESSMENT**

This Clause sets out the terms which apply to in relation to risk assessment given the pass-through arrangements which have been agreed between the parties.

8.1 **Initial level of risk exposure**

Given the pass-through arrangements which have been agreed between the parties and which are reflected in this Agreement, no assessment of the level of risk exposure arising on the premature termination of the provision of the Services by reason of the insolvency, winding up or liquidation of the Admission Body has been undertaken.

8.2 **Provision of bond, indemnity or guarantee**

The Administering Authority and the Scheme Employer have agreed that a bond, indemnity or guarantee is not required.

9. **INDEMNITY FROM ADMISSION BODY**

This Clause sets out the terms of the indemnity to be provided by the Admission Body in favour of the Administering Authority.

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

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

9.1.2 any breach by the Admission Body of this Agreement, the Regulations or any other legal or regulatory requirements applicable to the Scheme.

9.2 Any demand under **Clause 9.1** (Indemnity from admission body) must be paid by the Admission Body to the Administering Authority or to the Fund (as applicable) within 10 Business Days of receipt by the Admission Body of such demand. In the event of non-payment by the Admission Body, the Scheme Employer must indemnify and keep indemnified the Administering Authority against such costs and liabilities.

10. **GUARANTEE FROM SCHEME EMPLOYER**

This Clause sets out the terms of the guarantee to be provided by the Scheme Employer in favour of the Administering Authority.

10.1 **Failure to pay Scheme liabilities**

Where the Admission Body has failed to pay any sum due under this Agreement or the Regulations (in whole or in part) to the Administering Authority within 20 Business Days of receipt by the Admission Body of a written demand from the Administering Authority, the Scheme Employer must pay to the Administering Authority such sum or sums as the Administering Authority claims in respect of the unpaid liability.

10.2 **Service of Payment Notice and payment**

Any claim under **Clause 10.1** (Failure to pay scheme liabilities) must be made by written notice specifying the amount due (a "**Payment Notice**"), which must be served by the Administering Authority upon the Scheme Employer in accordance with **Clause 11** (Notices). The Payment Notice is to be accepted by the Scheme Employer as conclusive evidence for all purposes that the amount claimed is due to the Administering Authority. The Scheme Employer must pay the sum so demanded within 5 Business Days of receipt of the Payment Notice.

10.3 **Sums paid by the Scheme Employer**

10.3.1 All sums paid by the Scheme Employer in accordance with **Clause 10.1** (Failure to pay scheme liabilities) must be held and applied by the Administering Authority for the purpose of paying and discharging the Admission Body's liability to pay the relevant sums due under this Agreement or the Regulations.

10.3.2 Any payment to be made by the Scheme Employer must be made in sterling and must be free, clear of and without any deduction for taxes, levies, duties, charges, fees or any deductions or withholdings for or on account of any set-off or counterclaim.

10.4 **Receipt of payment**

Following any payment by the Scheme Employer in accordance with **Clause 10.1** (Failure to pay scheme liabilities), the Administering Authority must within 6 months of receipt of payment provide the Scheme Employer with a written account showing how the payment has been applied to the Fund. If any payment exceeds the amount required to discharge the liabilities of the Admission Body to the Fund, the Administering Authority must refund any overpayment to the Scheme Employer.

10.5 **Further Payment Notice**

The service of a Payment Notice by the Administering Authority does not preclude the service of any further Payment Notice.

10.6 **Obligations and liabilities**

The Scheme Employer's obligations and liabilities under this **Clause 10** (Guarantee from scheme employer) will not be reduced, discharged, impaired or affected by the giving of time or any other indulgence, forgiveness or forbearance by the Administering Authority in respect of the Admission Body.

10.7 **Change in status**

Unless expressly varied under **Clause 15** (Amendment), this **Clause 10** (Guarantee from scheme employer) will remain in effect in accordance with its terms notwithstanding any variation made in any of the other terms of this Agreement or the Regulations and notwithstanding the insolvency, winding-up or liquidation of the Admission Body (compulsory or otherwise) or it otherwise ceasing to exist or function. This **Clause 10** (Guarantee from scheme employer) and the obligations under it will not be affected by any disclaimer of the Admission Body's contracts or liabilities by a liquidator.

10.8 **Warranty of authority**

The Scheme Employer warrants and represents to the Administering Authority that it has all necessary authority, power and capacity to enter into and perform its obligations under this **Clause 10** (Guarantee from scheme employer), that all necessary actions have been taken to enter into those obligations properly and lawfully, and that those obligations are binding on the Scheme Employer in accordance with their respective terms.

10.9 **Expiry date**

- 10.9.1 The obligations and liabilities of the Scheme Employer under this **Clause 10** (Guarantee from scheme employer) will cease and determine absolutely on the full discharge of all liabilities of the Admission Body (arising under this Agreement and the Regulations) by the Admission Body or the Scheme Employer.
- 10.9.2 For the avoidance of doubt, this **Clause 10** (Guarantee from scheme employer) will continue to have effect after the termination of this Agreement unless and until all liabilities of the Admission Body under the Regulations or this Agreement have been discharged in full either by the Admission Body or by the Scheme Employer pursuant to **Clause 10.9.1** (Expiry date).

11. **NOTICES**

This Clause sets out how any written notices are to be served.

- 11.1 All notices under this Agreement must be in writing and must be served by being sent by first class post or delivered by hand to, or by being left at, the registered office of the Admission Body or the headquarter address of the Administering Authority or the Scheme Employer (as the case may be).
- 11.2 Any notice served in accordance with **Clause 11.1** (Notices) will be deemed to have been served:
- 11.2.1 if sent by first class post, at 9.00 am on the second Business Day after the date of posting; or
- 11.2.2 in any other case, at the time the notice is delivered to or left at the relevant address;

provided that if a notice would otherwise be deemed to be served before 9.00 am on a Business Day, it will be deemed to be served at 9.00 am on that day, and if it would otherwise be deemed to be served on a day which is not a Business Day or after 5.00 pm on a Business Day, it will be deemed to be served at 9.00 am on the immediately following Business Day.

12. **WAIVER**

This Clause sets out what happens if there is a failure to enforce the Agreement.

Failure or neglect by the Administering Authority or the Scheme Employer to enforce at any time any of the provisions of this Agreement will not be construed or deemed to be a waiver of the Administering Authority's or the Scheme Employer's rights (as the case may be) nor in any way affect the validity of the whole or any part of this Agreement nor prejudice the Administering Authority's or the Scheme Employer's rights (as the case may be) to take subsequent action.

13. **SEVERANCE**

This Clause sets out what happens if any part of the Agreement is found to be invalid.

- 13.1 If any provision of or period of Scheme membership following purported admission to the Scheme under this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not

affect the other provisions of or any other periods of Scheme membership under this Agreement, which will 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 will apply with such modification(s) as may be necessary to make it valid and enforceable.

14. **ENTIRE AGREEMENT**

This Clause provides that the Agreement sets out the only terms relating to the admission of the Admission Body.

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. **AMENDMENT**

This Clause sets out the terms that apply in relation to amending the Agreement.

The parties to this Agreement may amend this Agreement with the agreement of all of them in writing, provided that:

- 15.1 the amendment is not such that it would breach the Regulations or any other legal or regulatory requirements applicable to the Scheme; and
- 15.2 the amendment would not prejudice the status of the Scheme as a Registered Pension Scheme.

16. **PUBLIC INSPECTION**

This Clause sets out the circumstances in which the Agreement can be inspected by the public.

Subject to the Schedule being removed or redacted to protect personal data, as required by data protection law, this Agreement must be made available for public inspection by the Scheme Employer at its offices.

17. **MORE THAN ONE COUNTERPART**

This Clause sets out how the Agreement can be executed in counterparts.

This Agreement may be executed in any number of counterparts, each of which will constitute an original, but which will together constitute one agreement. This Agreement will not be effective until each party has executed at least one counterpart. The term "counterpart" includes a facsimile or scanned copy of this Agreement.

18. **LAWS**

This Clause sets out the legal framework which governs the Agreement.

- 18.1 This Agreement and any non-contractual obligation arising out of or in connection with it will be governed by and interpreted in accordance with the laws of England and Wales,

and the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement (including in relation to any non-contractual obligations).

- 18.2 The parties do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

This Agreement has been entered into on the date stated at the beginning of it.

SIGNED for and on behalf of
WOLVERHAMPTON CITY COUNCIL:

.....

SIGNED for and on behalf of
THE BOROUGH COUNCIL OF SANDWELL:

.....

SIGNED for and on behalf of
MELLORS CATERING SERVICES LIMITED:

.....