

Eversheds LLP
Eversheds House
70 Great Bridgewater Street
Manchester M1 5ES
United Kingdom

T: +44 20 7497 9797
F: +44 20 7919 4919
DX 14344 Manchester

eversheds.com

Dated: 2017

- (1) CAMBRIDGESHIRE COUNTY COUNCIL
- (2) EAST SUSSEX COUNTY COUNCIL
- (3) ESSEX COUNTY COUNCIL
- (4) HAMPSHIRE COUNTY COUNCIL
- (5) HERTFORDSHIRE COUNTY COUNCIL
- (6) ISLE OF WIGHT COUNCIL
- (7) KENT COUNTY COUNCIL
- (8) NORFOLK COUNTY COUNCIL
- (9) NORTHAMPTONSHIRE COUNTY COUNCIL
- (10) SUFFOLK COUNTY COUNCIL and
- (11) WEST SUSSEX COUNTY COUNCIL

Agreement to cooperate in the pooling of Local Government Pension Scheme investments

Eversheds Draft

Eversheds revised draft 21 November 2016

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DRAFT

BETWEEN

- (1) CAMBRIDGESHIRE COUNTY COUNCIL of Shire Hall, Castle Street, Cambridge, CB3 0AJ ("**Cambridgeshire**");
- (2) EAST SUSSEX COUNTY COUNCIL of County Hall, St Anne's Crescent, Lewes, East Sussex BN7 1UE ("**East Sussex**");
- (3) ESSEX COUNTY COUNCIL of County Hall, Market Road, Chelmsford CM1 1QH ("**Essex**");
- (4) HAMPSHIRE COUNTY COUNCIL of The Castle, Winchester, Hampshire SO23 8UJ ("**Hampshire**");
- (5) HERTFORDSHIRE COUNTY COUNCIL of County Hall, Pegs Lane, Hertford SG13 8DQ ("**Hertfordshire**");
- (6) ISLE OF WIGHT COUNCIL of County Hall, High St, Newport, Isle of Wight PO30 1UD ("**Isle of Wight**");
- (7) KENT COUNTY COUNCIL of County Hall, Maidstone, ME14 1XQ ("**Kent**");
- (8) NORFOLK COUNTY COUNCIL of County Hall, Martineau Lane, Norwich, NR1 2DH ("**Norfolk**");
- (9) NORTHAMPTONSHIRE COUNTY COUNCIL of County Hall, Northampton NN1 1ED ("**Northants**");
- (10) SUFFOLK COUNTY COUNCIL of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("**Suffolk**"); and
- (11) WEST SUSSEX COUNTY COUNCIL of County Hall , West Street, Chichester, West Sussex, PO19 1RG ("**West Sussex**")

BACKGROUND

WHEREAS

- (A) The Councils are each administering authorities within the Local Government Pension Scheme and within the meaning of the Local Government Pension Scheme Regulations 2013.
- (B) The Councils each administer, maintain and invest their own respective funds within the LGPS in accordance with those Regulations and the LGPS Investment Regulations.
- (C) In accordance with the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 the Councils have decided to enter into this Agreement in order to establish management arrangements relating to the joint undertaking of their respective Funds by appointing an entity to act as an alternative investment fund manager to run and operate one or more collective investment vehicles to allow the administering authorities to pool their respective investments.
- (D) This arrangement is intended to enable the Councils to execute their fiduciary responsibilities to LGPS stakeholders including scheme members and employers as economically as possible and to provide a range of asset types necessary to enable those participating authorities to execute their locally decided investment strategies as far as possible.
- (E) The Councils are local authorities within the meaning of the Local Government Act 1972 and have agreed as set out in this Agreement to establish and participate in a joint

committee which will be responsible for the Specified Functions to the extent provided for in the Terms of Reference.

- (F) The Councils have entered into this Agreement in reliance on the rights given to local authorities to undertake administrative arrangements of this nature in sections 101, 102, 103, 112 and 113 of the Local Government Act 1972 and the Regulations made under that Act together with the general power within section 2 of the Localism Act 2011 and the supporting provisions within section 111 Local Government Act 1972.

OPERATIVE PROVISIONS

IT IS HEREBY AGREED AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1 the following expressions have the following meanings unless inconsistent with the context:

"Agreement Personal Data" the Personal Data which is processed by the Councils pursuant to this Agreement

"Agreement" this Agreement

"Business Days" any day which is not a Saturday, a Sunday or a bank or public holiday

"Client Unit" employees of any Council employed at the request of the Joint Committee wholly or mainly for the purposes of implementing this agreement or the Pool

"Commencement Date" the date of this Agreement

"Constitution" the Constitution of the Joint Committee set out at **Schedule 1**

"Councils" (1) at the Commencement Date and until such time as a Council withdraws from this Agreement the local authorities who are parties to this Agreement and (2) after the withdrawal of a Council from this Agreement those local authorities who remain parties to this Agreement and (3) from such time as another local authority becomes party to this Agreement that local authority and the other local authorities who are parties to this Agreement

and each a "Council"

"Data Controller" has the same meaning as given to it under the Data Protection Legislation

"Data Processor" has the same meaning as given to it under the Data Protection Legislation

"Data Protection Authority" any organisation which is responsible for the supervision, promotion and enforcement of the Data Protection Legislation, including the Information Commissioners Office (or any joint, like, replacement or successor organisation from time to

time)

“Data Protection Legislation”

all privacy laws applicable to the personal data which is Processed under or in connection with this Agreement, including, where applicable, EU Directive 95/46/EC, 2002/58/EC, and Regulation (EU) 2016/679/EC (amongst others) as implemented by the applicable local laws, including the DPA, GDPR as directly applicable, and all regulations made pursuant to and in relation to such legislation together with all codes of practice and other guidance on the foregoing issued by any relevant data protection authority or government department, all as amended, updated and/or replaced from time to time

“DPA”

Data Protection Act 1998

“Exempt Information”

any information relating to this Agreement which may be:

- exempt from disclosure under the Freedom of Information Act 2000 (as updated, amended, or replaced from time to time); or
- excepted from disclosure under the Environmental Information Regulations 2004 (as updated amended, or replaced from time to time)
- or otherwise does not fall to be disclosed because it is vexatious or compliance with the Information Request would exceed an applicable time and costs limit specified within the FOI Legislation
- defined in Part VA of the Local Government Act 1972

“FOI Legislation”

the Freedom of Information Act 2000 and subordinate legislation made under this or the Environmental Information Regulations 2004 together with all codes of practice and other guidance on the foregoing issued by the Information Commissioner’s Office, and/or relevant Government Department, all as amended, updated and/or replaced from time to time (or, for the purposes of clause 16, exempt information as defined by Schedule 12A to the Local Government Act 1972)

“Former Council”

a Council which has withdrawn from this agreement.

“GDPR”

the General Data Protection Regulation as set out in Regulation (EC) 2016/679 which is expected to

come into force in the UK on 25 May 2018 and as may (in respect of the UK) be replaced, amended and or updated from time to time

"Head of Paid Service"	the statutory officer appointed to this role by each Council
"Host Authority"	the Council appointed from time to time to act as referred to in Clause 9 hereof
"Information Request"	a request for information under FOI Legislation
"Joint Committee"	the statutory Joint Committee of elected members from the Councils to be known as the LGPS Access Joint Committee established for the purposes contained within this Agreement
"Lead Authority"	Kent or such other Council as may be agreed from time to time by the Joint Committee as being the Council appointed to undertake the procurement of the Services
"LGPS"	the Local Government Pension Scheme in England and Wales
"LGPS Investment Regulations"	The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016
"Officer Working Group Terms of Reference"	the Terms of Reference of the Officer Working Group set out at Schedule 4
"Operator"	the person appointed by the Councils from time to time to provide the Services
"Operator Contract"	the arrangement entered into between the Councils and the Operator for the provision of investment services.
"Personal Data"	as defined in the Data Protection Act 1998
"Pool"	the arrangements made by the Councils to operate some investments using a joint investment vehicle
"Pool Aligned Assets"	any assets of the Councils not in vehicles run by the Operator but where the Joint Committee may recommend the Councils to use the same investment
"Pool Assets"	any assets of the councils which are managed by the Operator
"Process" and other derivations such as "Processed" and "Processing"	any use of Personal Data in accordance with the Data Protection Legislation. For the avoidance of doubt, this includes, without limitation, storing, accessing, reading, using, copying, printing, revising, deleting, disclosing, transferring or otherwise using Personal Data;

"Secretary to the Joint Committee"	the officer appointed in accordance with Clause 9 hereof
"Section 151 Officer"	the officer designated by each of the Councils as the person responsible for the proper administration of its financial affairs as required by section 151 of the Local Government Act 1972
"Services"	the services provided by the Operator in accordance with the Operator Contract
"Specified Functions"	managing the investment functions of the Councils as pension administering authorities to the extent specified in the Terms of Reference
"Terms of Reference"	the Terms of Reference of the Joint Committee set out at Schedule 2
"Vehicle"	any Collective Investment Vehicle used by the Operator as the repository for the investments which are under its stewardship.
"Withdrawal Date"	the date of withdrawal from the Agreement by a Council which gives notice to withdraw in accordance with the Agreement

- 1.2 references to the background section, clauses and Schedules are to the background section and clauses of and schedules to this Agreement and references to paragraphs are to paragraphs of the relevant Schedule;
- 1.3 the Schedules form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement will include the Schedules;
- 1.4 the background section and all headings are for ease of reference only and will not affect the construction or interpretation of this Agreement;
- 1.5 unless the context otherwise requires:
- 1.5.1 references to the singular include the plural and vice versa and references to any gender include every gender; and
 - 1.5.2 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.6 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references 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;
- 1.7 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.8 the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word "other" or a similar word or expression will not be

restricted by reason of the fact that they are preceded by words indicating a particular class of acts matters or things;

- 1.9 references to "in writing" or "written" are to communication effected by post and email or any other means of reproducing words in a legible and non-transitory form (but not fax);
- 1.10 an obligation on a party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that party; and
- 1.11 unless expressly stated otherwise, all obligations, representations and warranties on the part of two or more persons are (unless stated otherwise) entered into, given or made by such persons severally.

2. **TERM**

This Agreement shall come into force on the Commencement Date and shall continue from year to year subject to the right of the Councils to terminate this Agreement in accordance with the provisions of this Agreement.

3. **GOVERNING PRINCIPLES**

The Councils agree to adopt the principles set out in **Part 1** of **Schedule 1** when working jointly

4. **PRINCIPLES OF COLLABORATION**

The Councils agree to act in good faith and to adopt the behaviours set out in **Part 2** of **Schedule 1** when working jointly

5. **ESTABLISHMENT OF A JOINT COMMITTEE**

- 5.1 In exercise of their powers under sections 102(1)(b) of the Local Government Act 1972 and the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 the Councils hereby create the Joint Committee with effect from the Commencement Date.
- 5.2 The purpose of the Joint Committee shall be to undertake the Specified Functions to the extent set out in the Terms of Reference.
- 5.3 The Joint Committee shall operate and conduct its business in accordance with the terms of this Agreement including the Constitution and the Terms of Reference.
- 5.4 In so far as the business of the Joint Committee may require the exercise of overview or scrutiny functions by the elected members of the Councils each of the Councils will comply with the overview and scrutiny requirements of its own constitution.
- 5.5 In discharging its functions the Joint Committee shall:
 - 5.5.1 Take steps to ensure that the Operator provides sufficient sub-funds to enable each Council to execute its investment strategy;
 - 5.5.2 Have due regard to any relevant stewardship codes of practice or other relevant documents recognising that individual Councils reserve the right to adopt their own individual policies in areas including application of stewardship codes, exercise of shareholder voting rights and policies in respect of responsible investment;
 - 5.5.3 Ensure at all times that the processes and arrangements of the pool deliver value for money for the Councils and the taxpayer;

- 5.5.4 Ensure that members appointed to the Joint Committee undertake training to acquire and maintain knowledge and skills relevant to the performance of their duties; and
 - 5.5.5 Put arrangements in place to ensure that it takes decisions only after considering proper advice from the Officer Working Group or from appropriate professional advisers.
- 5.6 The Councils may from time to time agree to vary this Agreement to enable any other pension administering authority to become a party to this Agreement and such agreement will be effected by the Councils and that other pension administering authority entering into a deed of variation on such terms as may be agreed including but without prejudice to the generality hereof to include provision that the terms of Schedule 5 relating to cost sharing will apply.

6. **TERMS OF REFERENCE OF THE JOINT COMMITTEE**

The terms of reference of the Joint Committee are set out in **Schedule 2** of this Agreement.

7. **PROCUREMENT OF THE OPERATOR**

- 7.1 The Councils will jointly procure the services of an operator to provide the Services. The Lead Authority will issue the necessary invitation and formally respond to any queries and receive the bids.
- 7.2 The Lead Authority will consult each Council as to the form and content of the documents used to procure the operator and will consider any comments made by each Council in response.
- 7.3 The Lead Authority will issue the award notice and the Operator Contract will be entered into by each Council as co-signatories or by such other means as the Councils may agree.
- 7.4 Should any Council decline to be a party to the Operator Contract then that Council shall be treated as having given notice to withdraw in accordance with **Clause 12** hereof save that such notice will have immediate effect.

8. **GOVERNANCE**

- 8.1 Each of the Councils shall each ensure that as soon as reasonably practicable it makes any changes to its own constitution as are necessary to facilitate the operation of this Agreement.
- 8.2 This Agreement is entered into without prejudice to the exercise by the section 151 officer the Monitoring Officer and the Head of Paid Service of any Council of their statutory powers and duties and without prejudice to the generality of the foregoing each Council will provide the said officers with all such information as is reasonably required to enable each of them to undertake their statutory role and responsibilities.

9. **HOST AUTHORITY**

- 9.1 On the Commencement Date Kent County Council will act as Host Authority on behalf of the Joint Committee and will designate one of its officers to be the Secretary to the Joint Committee.
- 9.2 The role of Host Authority may be undertaken by any Council as agreed by the Joint Committee from time to time with the agreement of the Council concerned.
- 9.3 The Joint Committee will designate officers nominated by the Councils for the purpose of providing support to it in undertaking its functions including engaging with the Operator on behalf of the Joint Committee as client and commissioner.

10. **COST SHARING**

- 10.1 Costs incurred in the operation of the Joint Committee (including the costs of officers providing support to the Joint Committee through the Officer Working Group in accordance with this Agreement but excluding costs incurred by the Host Authority in its capacity as Host Authority) will be borne by the Council incurring them.
- 10.2 Costs incurred as a result of the Councils entering into this Agreement will be shared and paid in accordance with **Schedule 5** of this Agreement.

11. **VARIATION OF AGREEMENT**

- 11.1 Any of the Councils may request a variation to this Agreement by making such a request in writing to the Secretary to the Joint Committee.
- 11.2 The Secretary to the Joint Committee shall circulate the request to each of the Councils by sending it to the officers nominated in accordance with Clause 9.3 and to the Officer Working Group within 10 Business Days of receipt of the request for consideration and approval by the Councils.
- 11.3 Each Council shall provide a response to the Secretary to the Joint Committee indicating whether it agrees to the variation and shall do so within 60 Business Days of receipt of the request. Any failure to respond within that period shall be deemed to indicate agreement to the requested variation.
- 11.4 If all of the Councils approve the variation then the Secretary to the Joint Committee shall arrange for the preparation of an appropriate deed of variation to this Agreement to be prepared for execution by all of the Councils and such change shall only take effect upon completion of that deed and the costs associated with the preparation of such deed of variation shall be shared equally between the Councils.
- 11.5 If any of the Councils does not approve the variation then the variation to this Agreement shall not occur.

12. **WITHDRAWAL FROM THIS AGREEMENT¹**

- 12.1 A Council may withdraw from this Agreement in accordance with the procedure set out in this Clause 12.
- 12.2 Any Council which wishes to withdraw from this Agreement shall subject to any decision by the Joint Committee to waive this requirement give not less than twelve months written notice to expire on 31st March to the Secretary to the Joint Committee of its intention to do so.
- 12.3 A Council wishing to withdraw from this Agreement undertakes as a condition of such withdrawal to make payment as shall be determined in the manner set out in **Part 2 of Schedule 5** to this Agreement.
- 12.4 On the Withdrawal Date the Council giving notice shall cease to be a member of the Joint Committee and subject to Clause 19 hereof this Agreement shall cease to apply to that Council
- 12.5 Each Council is entitled to recover from any Council which withdraws from this Agreement the costs of any claims, costs, expenses, losses or liabilities of any nature or which have been caused by any act or omission of the other Council and which are discovered after the other Council's withdrawal from this Agreement.
- 12.6 Where a Council withdraws from this Agreement it must unless the Joint Committee agree otherwise withdraw all its funds from the Vehicle no later than the Withdrawal Date.

13. **TERMINATION OF THIS AGREEMENT**

- 13.1 This Agreement may be terminated upon terms agreed by all Councils but only before the commencement of or on termination of the Operator Contract.
- 13.2 Upon termination of this Agreement the Councils agree that the Joint Committee shall cease to exist.
- 13.3 Notwithstanding the termination of this Agreement the Councils each agree to do all such acts and things and execute all such documents as each of them reasonably requires.
- 13.4 On termination of this Agreement the provisions relating to costs set out in **Part 3 of Schedule 5** will have effect.

14. **DISPUTE RESOLUTION**

- 14.1 The Councils undertake and agree to pursue a positive approach towards dispute resolution which seeks (in the context of this joint working arrangement) to identify a solution at the lowest operational level that is appropriate to the subject of the dispute and which avoids legal proceedings and maintains a strong working relationship between the Councils.
- 14.2 In the event of any dispute or disagreement arising out of or in connection with this Agreement or any breach thereof a Council may serve notice upon one or more of the other Councils setting out brief details of the Dispute that has arisen and the Notice of Dispute shall in the first instance be considered by the Section 151 Officers of the relevant Councils who shall acting in good faith attempt to resolve such dispute within 28 days of the Dispute being referred to them.
- 14.3 Where the Section 151 Officers are unable to resolve such dispute within that period of 28 days or where in the opinion of those officers such dispute would be more effectively resolved in another forum the councils in dispute may refer such dispute to a suitably qualified and independent person as may be recommended by the Section 151 Officers and to be agreed by the Councils which are in dispute or in the event of failure within a period of 28 days to agree on such appointment a person nominated by the President of the Law Society who shall act as an expert.
- 14.4 Where a dispute is referred to a person appointed under clause 14.3 hereof that person shall determine the procedure and timetable for resolution of the said dispute at his or her absolute discretion and the decision of that person shall be binding on the Councils.
- 14.5 For the avoidance of doubt, this **clause 14** applies only to disputes between the Councils and does not apply to any dispute between the Councils and Operator or between the officers supporting the Joint Committee.

15. **NOTICES**

- 15.1 Any notice or other communication given under or in connection with this Agreement will be in writing, marked for the attention of the specified representative of the party to be given the notice or communication and:
 - 15.1.1 sent to that party's address by pre-paid first class post or mail delivery service providing guaranteed next working day delivery; or
 - 15.1.2 delivered to or left at that party's address.
- 15.2 The address and representative for each Council are set out below and may be changed by that party giving at least 10 Business Days' notice in accordance with this **clause 15**.

COUNCIL	ADDRESS	FOR THE ATTENTION OF
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COUNCIL	ADDRESS	FOR THE ATTENTION OF
CAMBRIDGESHIRE COUNTY COUNCIL	Shire Hall, Castle Street, Cambridge, CB3 0AJ	
EAST SUSSEX COUNTY COUNCIL	County Hall, St Anne's Crescent, Lewes, East Sussex BN7 1UE	
ESSEX COUNTY COUNCIL	County Hall, Market Road, Chelmsford CM1 1QH	
HAMPSHIRE COUNTY COUNCIL	The Castle, Winchester, Hampshire SO23 8UJ	
HERTFORDSHIRE COUNTY COUNCIL	County Hall, Pegs Lane, Hertford SG13 8DQ	
ISLE OF WIGHT COUNCIL	County Hall, High St, Newport, Isle of Wight PO30 1UD	
KENT COUNTY COUNCIL	County Hall, Maidstone, ME14 1XQ	
NORFOLK COUNTY COUNCIL	County Hall, Martineau Lane, Norwich, NR1 2DH	
NORTHAMPTONSHIRE COUNTY COUNCIL	County Hall, Northampton NN1 1ED	
SUFFOLK COUNTY COUNCIL	Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX	
WEST SUSSEX COUNTY COUNCIL	County Hall, West Street, Chichester, West Sussex, PO19 1RG	

15.3 Any notice or communication given in accordance with this **clause 15** will be deemed to have been served:

15.3.1 if given as set out in **clause 15.1**, at 9.00am on the 2nd Business Day after the date of posting; and

15.3.2 if given as set out in **clause 15.1**, at the time the notice or communication is delivered to or left at that party's address,

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

15.4 For the purposes only of this **clause 15**, references to time of day are to the time of day at the address of the recipient parties referred to in **clause 15**.

15.5 To prove service of a notice or communication it will be sufficient to prove that the provisions of this **clause 15** were complied with.

16. **INFORMATION AND CONFIDENTIALITY**

16.1 Whilst acknowledging that meetings of the Joint Committee will ordinarily be open to the public, and that the Councils intend to comply with their respective obligations under the

FOI Legislation, the Councils shall seek to protect the commercial information and in particular shall

16.1.1 seek to prevent the disclosure of any Exempt Information relating to this agreement; and

16.1.2 use all reasonable endeavours to prevent their employees and agents from making any disclosure of any Exempt Information to any person of any matter relating to the Agreement.

16.2 **Clause 16.1** shall not apply to:

16.2.1 Any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under this Agreement;

16.2.2 Any matter which a Council can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;

16.2.3 Any disclosure to enable a determination to be made under **clause 14** (Dispute Resolution);

16.2.4 Any disclosure which is required by any law (including any order of a court of competent jurisdiction), in compliance with the Data Protection Legislation, and/or the FOI Legislation (including their relevant exemptions and exceptions where appropriate), any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;

16.2.5 Any required disclosure by a Council to a department, office or agency of the Government; and

16.2.6 Any disclosure for the purpose of the examination and certification of a Council's accounts.

16.3 Save for in relation to disclosures made under the FOI Legislation which for the avoidance of doubt, cannot be made subject to imposed conditions or where disclosure is permitted under **clause 16.2**, the recipient of the information shall be placed under the same obligation of confidentiality as that contained in this Agreement by the disclosing Council.

17. **DATA PROTECTION**

17.1 The Councils shall be Data Controllers of the limited Personal Data which may be Processed pursuant to this Agreement ("**the Agreement Personal Data**"). As such, the Councils shall at all times comply with their obligations under the Data Protection Legislation. In doing so the Councils shall:

17.1.1 to the extent required, maintain a valid and up to date registration or notification under the Data Protection Legislation covering any Processing of Agreement Personal Data;

17.1.2 only undertake Processing of Agreement Personal Data that is reasonably required in connection with the operation of this Agreement and only as may be lawful under the Data Protection Legislation;

17.1.3 not transfer any Agreement Personal Data to any country or territory outside the European Economic Area, notwithstanding their ability to do so under the Data Protection Legislation, save for any export of Agreement Personal Data which is compliant with the Data Protection Legislation which is necessary for the use of core IT services and systems operated by the Councils in connection with this Agreement;

- 17.1.4 implement appropriate technical and organisational measures to prevent unauthorised or unlawful Processing of Agreement Personal Data and against the accidental loss, or destruction of, or damage to Agreement Personal Data;
 - 17.1.5 promptly notify the other Councils (and no later than within one working day) if they become aware of any actual or suspected, threatened or 'near miss' incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of or access to the Agreement Personal Data Processed, or if it is corrupted or rendered unusable, which is reasonably likely to result in risks to the rights and freedoms of natural persons, pursuant to this Agreement;
 - 17.1.6 use their reasonable endeavours to restore or retrieve any personal data which is unlawfully or accidentally lost, destroyed, damaged, corrupted or made unusable;
 - 17.1.7 keep full, up-to-date and accurate records of any processing of Personal Data carried out pursuant to this Agreement;
 - 17.1.8 promptly respond to any request from one of the other Councils to amend, transfer, delete or otherwise Process Personal Data; and
 - 17.1.9 not do anything (whether by act or omission) which would cause the other Councils to be in breach of their obligations as Data Controllers of the Agreement Personal Data under the Data Protection Legislation.
- 17.2 The Councils shall not disclose Agreement Personal Data to any third parties in compliance with the Data Protection Legislation, for example other than:
- 17.2.1 as required in law in response to a data subject access request under the DPA;
 - 17.2.2 to employees and contractors to whom such disclosure is necessary in order to comply with their obligations under this Agreement; or
 - 17.2.3 to the extent required to comply with a legal obligation.
- 17.3 To the extent that any Council acts as a Data Processor for and on behalf of one or more of the other Councils in relation to the Agreement Personal Data Processed pursuant to this Agreement, the Data Processor shall:
- 17.3.1 only Process that Agreement Personal Data on the instructions of the Data Controller(s);
 - 17.3.2 Process that Agreement Personal Data in accordance with their obligations under the Data Protection Legislation (to the extent applicable);
 - 17.3.3 implement appropriate technical and organisational measures to prevent unauthorised or unlawful Processing of that Agreement Personal Data and against the accidental loss, or destruction of, or damage to that Agreement Personal Data;
 - 17.3.4 notify the Data Controller(s) within one working day of becoming aware of any actual or suspected loss, alteration or disclosure of that Agreement Personal Data in breach of this Agreement, or the Data Protection Legislation;
 - 17.3.5 provide such reasonable assistance to the Data Controller(s) in the event of any:
 - 17.3.5.1 request from individuals in relation to their Agreement Personal Data (including a data subject access request and/or a request to correct or stop processing any Personal Data);

- 17.3.5.2 request from the Information Commissioner's Office in relation to any Processing of that Agreement Personal Data including in relation to any complaint, data subject access request and/or , data security incident;
- 17.3.6 subject to the Data Controller entering into appropriate non-disclosure agreements and on reasonable request and notice, provide the Data Controller with access to their premises during regular business hours in order to inspect whether the Data Processor is complying with its obligations pursuant to this Agreement. Additionally, the Data Processor shall, at no cost to the Data Controller, take such further steps as may be reasonably necessary in the opinion of the Data Controller to permit the Data Controller to obtain an accurate and complete assessment of the Data Processor's compliance with its obligations under this Agreement and, in particular, this clause 17;
- 17.3.7 not transfer any Agreement Personal Data outside the European Economic Area, unless this is done with the express written agreement of the Data Controller and it is necessary for the use of core IT services and systems operated by the Councils, and is undertaken in compliance with Data Protection Legislation; and
- 17.3.8 on withdrawal from or termination of this Agreement, return all the Agreement Personal Data to the Data Controller(s) and securely delete and/or destroy any copies of the Agreement Personal Data which is Processed by the Data Processor pursuant to this Agreement, unless applicable laws permit retention of the Agreement Personal Data, in which case the relevant Council(s) agree(s) it (or they) shall retain the Agreement Personal Data securely and only for as long as strictly necessary in the capacity as a Data Controller.
- 17.4 The Councils acknowledge that the Data Protection Legislation includes the GDPR if it enters in to force on 25 May 2018 or on any date after. In order to address those potential upcoming changes:
- 17.4.1 the Councils shall during the first twelve (12) months of this Agreement, develop, draft and agree a protocol which will document and provide further detail regarding the manner in which the Agreement Personal Data will be Processed in order to meet the requirements of the GDPR; and
- 17.4.2 the Councils note that the provisions of this Agreement do not necessarily comply with the GDPR requirements. As such, the Councils agree to review and (to the extent necessary) revise the terms of this Agreement as may be appropriate in the six (6) months preceding the date of the GDPR coming into force in England and Wales.
- 17.5 Each Council agrees to indemnify and keep indemnified and defend at its own expense the other Councils against all costs, claims, damages and/or expenses (including legal and administrative) incurred by the other Councils or for which the other Councils may become liable due to any failure by a particular Council, its employees or agents to comply with any of its obligations under this clause 17.
18. **FREEDOM OF INFORMATION**
- 18.1 The Councils recognise that each Council is a public authority as defined by FOI Legislation and therefore recognise that information relating to this Agreement may be the subject of an Information Request which shall be considered in accordance with this clause 18.
- 18.2 The Councils shall assist each other in complying with their obligations under FOI Legislation as they relate to Information Requests made in relation to this Agreement, including but not limited to assistance without charge in gathering information to respond to an Information Request relating to this Agreement. For the avoidance of doubt, nothing in this clause 18.2, shall require a Council to provide information, if the relevant

information has not been held on behalf of the Council that received the Information Request.

18.3 Each Council, as a separate public authority, shall in their absolute and sole discretion, decide:

18.3.1 whether the Information Request is valid under the FOI Legislation, as well as all other considerations relevant in the assessment of an Information Request under the FOI Legislation, such as any considerations (as may be applicable) regarding the cost of complying with a request or any charges for responding to a request, whether the request is repeated, vexatious or manifestly unreasonable and any other relevant considerations;

18.3.2 whether the information requested in an Information Request is relevant to the Agreement;

18.3.3 whether, if the Information Request does relate to the Agreement, whether the information is Exempt Information;

18.3.4 where appropriate, whether or not in all circumstances of the case the public interest in maintaining any exemption outweighs the public interest in disclosing the requested information; and

18.3.5 whether the information requested in the Information Request is to be disclosed or not, or proactively disclosed regardless of whether an Information Request is received or not.

18.4 Where a Council receives an Information Request for information about the Agreement which may be Exempt Information and which refers to one or more of the Councils, then where reasonably practicable and subject to clause 18.5 below take reasonable steps prior to disclosure of such information to:

18.4.1 as soon as reasonably practicable, circulate the Information Request to the other Council(s) to which the Information Request relates and invite those other Council(s) to make representations to the Council which received the Information Request as to whether or not the information is considered to be Exempt Information and as to disclosure; and

18.4.2 in good faith, consider any representations raised by the Council(s) consulted pursuant to Clause 18.4.1 when deciding whether to disclose Exempt Information, but the Council which receives the Information Request shall not be obliged to accept or agree to the representations which are made by the other Council(s).

18.5 The Councils acknowledge that (notwithstanding the provisions of this Clause 18) the Council which received the Information Request may, under the FOI Legislation or acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "Code"), be obliged under the FOI Legislation to disclose information concerning this Agreement or the other Councils:

18.5.1 in certain circumstances without consulting with other Councils; or

18.5.2 following consultation with other Councils and having taken their views into account,

provided always that where 18.5.1 above applies the Council which receives the Information Request, shall take reasonable steps wherever practicable to draw this to the attention of the other Councils prior to any disclosure.

18.6 The Councils acknowledge and agree that no Council will be liable to any other Council for any loss, damage, harm or detrimental effect arising from or in connection with the disclosure of information in response to an Information Request.

19. **PROVISIONS REMAINING OPERATIVE**

19.1 Following the termination of this Agreement:

19.1.1 the following provisions will continue in force:

Clause 3 and Schedule 1

Clause 4 and Schedule 1

Clause 8

Clause 10 and Schedule 5

Clause 12

Clause 13

Clause 14

Clause 15

Clause 16

Clause 17

Clause 18

together with any other provisions which expressly or impliedly continue to have effect after expiry or termination of this Agreement; and

19.1.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including without limitation claims for damages for breach) and liabilities which have accrued prior to termination.

20. **EQUAL OPPORTUNITIES**

Each of the Councils is subject to public law duties under the Equality Act 2010 and agree to operate the Agreement in such a way as to ensure compliance the requirements of the Equality Act 2010.

21. **RELATIONSHIP OF COUNCILS**

Each of the Councils is an independent local authority and nothing contained in this Agreement shall be construed to imply that there is any relationship between the Councils of partnership or principal/agent or of employer/employee. No Council shall have any right or authority to act on behalf of another Council nor to bind any of the other Councils by contract or otherwise except to the extent expressly permitted by the terms of this Agreement.

22. **COUNTERPARTS**

22.1 This Agreement may be executed in any number of counterparts, each of which will constitute an original but which will together constitute one agreement.

23. **SEVERANCE**

If any term of this Agreement is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this Agreement and this will not affect the remainder of this Agreement which will continue in full force and effect. In this event the parties will agree a valid and enforceable term to replace the severed term which, to the maximum extent possible, achieves the parties' original commercial intention and has the same economic effect as the severed term.

24. **RIGHTS OF THIRD PARTIES**

The Councils do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

25. **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.

26. **JURISDICTION**

Each party agrees that 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).

27. **CHANGE IN ADMINISTERING AUTHORITY**

27.1 This clause 26 applies if any of the Councils is to be abolished or ceases to be an administering authority in circumstances where one or more local authorities become the administering authority in place of the Council.

27.2 Where this clause applies the Council affected may, subject to any contrary provision in any statutory order made in connection with the abolition or change in administering authority, assign this agreement to the replacement administering authority or administering authorities, provided that the replacement administering authorities must agree to accept the assignment and the obligations arising.

This document is executed as a **deed** and **delivered** on the date stated at the beginning of this Agreement.

Executed as a deed by)
CAMBRIDGESHIRE COUNTY COUNCIL)
by affixing the common seal)
in the presence of:)

Authorised signatory: _____

Executed as a deed by)
EAST SUSSEX COUNTY COUNCIL)
by affixing the common seal)
in the presence of

Authorised signatory: _____

Executed as a deed by)
ESSEX COUNTY COUNCIL)
by affixing the common seal)
in the presence of:)

Authorised signatory: _____

:)

Executed as a deed by)
HAMPSHIRE COUNTY COUNCIL)
by affixing the common seal)
in the presence of:)

Authorised signatory: _____

Executed as a deed by)
HERTFORDSHIRE COUNTY COUNCIL)
by affixing the common seal)
in the presence of:)

Authorised signatory: _____

Executed as a deed by)
ISLE OF WIGHT COUNTY COUNCIL)
by affixing the common seal)
in the presence of:)

Authorised signatory: _____

Executed as a deed by)
KENT COUNTY COUNCIL)
by affixing the common seal)
in the presence of:)

Authorised signatory: _____

Executed as a deed by)
NORFOLK COUNTY COUNCIL)
by affixing the common seal)
in the presence of:)

Authorised signatory: _____

Executed as a deed by)
NORTHAMPTONSHIRE COUNTY COUNCIL)
by affixing the common seal)
in the presence of:)

Authorised signatory: _____

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Executed as a deed by)
SUFFOLK COUNTY COUNCIL)
by affixing the common seal)
in the presence of:)

Authorised signatory: _____

Executed as a deed by)
WEST SUSSEX COUNTY COUNCIL)
by affixing the common seal)
in the presence of:)

Authorised signatory: _____

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SCHEDULE 1

PRINCIPLES

Part 1 Governing Principles

1. The Councils will work collaboratively.
2. The Councils will have an equitable voice in governance.
3. Decision making will be objective and evidence based.
4. The Pool will use professional resources as appropriate.
5. The risk management processes will be appropriate to the Pool's scale, recognising it as one of the biggest pools of pension assets in the UK.
6. The Pool will avoid unnecessary complexity.
7. The Pool will evolve its approach to meet changing needs and objectives.
8. The Pool will welcome innovation.
9. The Pool will be established and run economically, applying value for money considerations.
10. The Pool's costs will be shared equitably.
11. The Pool is committed to collaboration with other pools where there is potential to maximise benefits.

Part 2 Principles of Collaboration

1. to establish and adhere to the governance structure set out in this Agreement to ensure that activities are delivered and actions taken as required;
2. to manage and account to each other for performance of their respective roles and responsibilities set out in this Agreement;
3. to communicate openly about concerns, issues or opportunities relating to the Project;
4. to learn, develop and seek to achieve full potential. The Councils will share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
5. to behave in a positive, proactive manner;
6. to adhere to statutory requirements and best practice. The Councils will comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation;
7. to recognise the time-critical nature of the work and respond accordingly to requests for support;
8. to manage stakeholders effectively;
9. to ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this Agreement.

SCHEDULE 2

Terms of Reference of the Joint Committee

Part 1 Functions in relation to the Operator

1. **Specifying Operator services:** Deciding, in consultation with the Councils, the specification of services and functions that the Operator will be required to deliver including the sub-funds and classes of investments required to enable each Council to execute its investment strategy.
2. **Procuring the Operator:** agreeing the method and process for the procurement and selection of the Operator.
3. **Appointing the Operator:** Making a recommendation to the Councils as to the identity of the Operator and the terms upon which the Operator is to be appointed.
4. **Reviewing the Performance of the Operator:** Keeping the performance of the Operator under constant review and making arrangements to ensure that the Joint Committee is provided with regular and sufficient reports from the Officer Working Group to enable it to do so including but not limited to:
 - 4.1 the performance of the Operator against its contractual requirements and any other performance measures such as any Service Level Agreement (SLA) and key performance indicators (KPIs) and Officer Working Group recommendations on any remedial action;
 - 4.2 sub-fund investment performance;
 - 4.3 investment and operational costs including the annual review of investment manager costs;
 - 4.4 performance against the strategic business plan agreed by the Councils.
5. **Managing the Operator:** The Joint Committee shall:
 - 5.1 Make recommendations to the Councils on the termination or extension of the Operator Contract and
 - 5.2 Make decisions about any other action to be taken to manage the Operator Contract including the giving of any instruction or the making of any recommendation to the Operator including but not restricted to recommendations on investment managers (within any regulatory constraints that may apply).
6. **Appointment of Advisers**
 - 6.1 The Joint Committee may appoint such professional advisers on such terms as it thinks fit. Any procurement of advisers must comply with the constitution of the Authority designated to undertake the procurement and that Authority will enter into a contract with the appointed adviser on behalf of the Authorities.
 - 6.1 The Joint Committee may appoint such professional advisers on such terms as it thinks fit. Any procurement of advisers must comply with the constitution of the Authority designated to undertake the procurement and that Authority will enter into a contract with the appointed adviser on behalf of the Authorities.
 - 6.2 The Joint Committee shall decide which tasks shall be performed by the Client Unit and which Council shall manage the Client Unit including the employment arrangements for employees in the Client Unit.

Part 2 Functions in relation to management of Pool Assets

7. The Joint Committee shall make recommendations to the Councils on the strategic plan for transition of assets that are to become Pool Assets.

Part 3 Functions Concerning Pool Aligned Assets

8. Making recommendations to the Councils about Pool Aligned Assets (including proposals concerning the migration of investments-such as passive investments via life fund policies-to become Pool Aligned Assets) in accordance with this Agreement or any other delegation to the Joint Committee by the Councils.

Part 4 Functions concerning Business Planning and Budget

9. Make recommendations to the Councils about the annual strategic business plan for the Pool
10. Determine the budget necessary to implement that plan and meet the expenses of undertaking the Specified Functions (insofar as they will not be met by individual transaction costs paid by Councils to the Operator) in accordance with Schedule 5 hereof.
11. Keep the structures created by this Agreement under review from time to time and make recommendations to the Councils about:
 - 11.1 the future of the Pool;
 - 11.2 any changes to this Agreement; and
 - 11.3 as to the respective merits of continuing to procure operator services by means of a third party or by creation of an operator owned by the Councils.
12. The Joint Committee is required to commence the first review of this Agreement by the second anniversary of its first meeting.
13. The Joint Committee is required to undertake a review of the Pool and this Agreement:
 - 13.1 to be completed 18 months before the expiry of each and every Operator Contract including as a result of the exercise of any option to terminate the Operator Contract;
 - 13.2 whenever a Council gives notice of withdrawal under clause 12 of this agreement

SCHEDULE 3

Constitution of the Joint Committee

Part 1 Membership

1. The Joint Committee shall consist of one elected councillor appointed by each Council. The member so appointed must, at the time of the appointment, be an elected councillor serving as a member of the Committee of a Council which discharges the functions of that Council as pension administering authority.
2. Each Council may appoint a substitute. Any substitute must meet the eligibility requirements in paragraph 1. The substitute may attend any meeting of the Joint Committee or any of its sub-Committees in place of that authority's principal member if notice that the substitute will attend is given to the Secretary of the Joint Committee by the Council concerned
3. Where a substitution notice is in effect with respect to a particular member at a particular meeting, the substitute shall be a full member of the Joint Committee for the duration of the meeting in place of the principal member
4. Each Council may remove its appointed member and appoint a different member by giving written notice to the Secretary to the Joint Committee.
5. Each appointed member shall be entitled to remain on the Joint Committee for so long as the Council appointing them so wishes, but shall cease to be a member if he or she ceases to meet the eligibility criteria in paragraph 11 or if that Council removes the appointed member.
6. Any casual vacancies will be filled as soon as reasonably practicable by the Council from which such vacancy arises by giving written notice to the Secretary to the Joint Committee or his or her nominee.
7. The Joint Committee may co-opt any other person whom it thinks fit to be a non-voting member of the committee. The Joint Committee may from time to time make rules as to:
 - 7.1 Registration and declaration of interests by co-opted members.
 - 7.2 Standards of behaviour required to be observed by co-opted members when acting as such.
8. The Chairman of the Joint Committee will be appointed from time to time by the members of the Joint Committee. Subject to paragraph 5, the Chairman of the Joint Committee shall hold that office until their replacement is appointed which shall be at the first meeting to take place after the second anniversary of their appointment.
9. The Vice-Chairman of the Joint Committee will be appointed from time to time by the members of the Joint Committee. Subject to paragraph 5, the Vice-Chairman of the Joint Committee shall hold that office until their replacement is appointed which shall be at the first meeting to take place after the second anniversary of their appointment.
10. The Joint Committee may appoint sub-committees from among its membership as it thinks will help it to enable it to fulfil its remit. The Joint Committee may delegate its responsibilities to such sub-committees. Sub-Committees may co-opt non-voting members.
11. The Joint Committee may set up working groups to advise it on matters within its remit. Such working groups may be formed of members or officers of the constituent authorities or any other third party as the Joint Committee sees fit. Such working groups are advisory only and the Joint Committee may not delegate its responsibilities to such working groups.

12. Each member of the Joint Committee and any Sub-committee shall comply with any relevant code of conduct of their Council when acting as a member of the Joint Committee.
13. The Chairman may direct the Secretary to call a meeting and may require any item of business to be included in the summons.
14. Any 5 members of the Joint Committee may by notice in writing require the Chairman to call a meeting to consider a particular item of business and if the Chairman fails to do so within 20 working days of receipt of the notice then those 5 members may direct the Secretary to call a meeting to consider that business.
15. The Committee may, if the law permits, arrange for attendance at meetings via video conferencing. Any such attendance shall be in accordance with the law and any other requirements imposed by the Joint Committee from time to time.

Part 2 Proceedings

16. Time and Place of Meetings

The Joint Committee will meet at least four times each year. All meetings of the Joint Committee will take place at a suitable venue and at a time to be agreed by the Councils.

17. Notice of and Summons to Meetings

The Secretary to the Joint Committee will give notice to the public of the time and place of any meeting in accordance with Part VA of the Local Government Act 1972. At least five clear days before a meeting, the Secretary to the Joint Committee will send a summons by email and if a member so requests by post to every Member at their last known address. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

18. Chairing of Joint Committee

The Vice Chairman shall preside in the absence of the Chairman. If there is a quorum of members present but neither the Chairman nor the Vice-Chairman is present at a meeting of the Joint Committee, the other members of the Joint Committee shall choose one of the members of the Joint Committee to preside at the meeting.

19. Quorum

19.1 The quorum of a meeting will be at least 8 members who are entitled to attend and vote.

19.2 If there is no quorum present at the start of the meeting the meeting may not commence. If after 1 hour from the time specified for the start of the meeting no quorum is present then the meeting shall stand adjourned to another time and date determined by the Secretary.

20. Voting

20.1 Majority

Each elected member shall have one vote. Co-opted members will not have a vote. Any matter will be decided by a simple majority of those members of the Councils represented in the room at the time the question is put. In the event of equality of votes the person presiding at the meeting will be entitled to a casting vote under paragraphs 39(1) and 44 of Schedule 12 of the Local Government Act 1972.

20.2 **By Substitutes**

The member appointed as a substitute shall have the same voting rights as the member for whom he or she is substituting. Where notice of substitution has been given for a particular meeting the principal member may not vote unless the notice of substitution is withdrawn before the start of the meeting.

20.3 **Show of hands**

The Chairman will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

20.4 **Recording of individual votes**

The minutes of the meeting shall record how a member of the Committee voted on a particular question if, at the time that the vote is taken or immediately thereafter, that member asks the Secretary or his or her representative at the meeting to record his vote.

21. **Minutes**

21.1 The Secretary to the Joint Committee shall arrange for written minutes to be taken at each meeting of the Joint Committee and shall present them to the Joint Committee at its next meeting for approval as a correct record. At the next meeting of the Joint Committee, the Chairman shall move that the minutes of the previous meeting be signed as a correct record. If this is agreed, the Chairman of the Joint Committee shall sign the minutes. The only part of the minutes that can be discussed is their accuracy.

21.2 Draft minutes or a summary of the decisions taken at the meeting and a note of the actions arising shall be circulated to the Committee and to each Council by email no later than 7 days after the date of the meeting.

22. Any elected member of the Councils who is not a member of the Joint Committee may speak at a meeting of the Joint Committee if the Chairman of the Joint Committee invites him or her to do so but an elected member of the Councils who is not a member of the Joint Committee shall not be entitled to vote at a meeting of the Joint Committee.

23. Meetings of the Joint Committee shall be open for members of the public to attend unless the Joint Committee determines that it is necessary to exclude members of the public in accordance with Part VA of the Local Government Act 1972 or the Joint Committee determines that it is necessary to close the meeting to the public because of a disturbance.

23.1 Copies of the agenda for meetings of the Joint Committee and any reports for its meetings shall be open to inspection by members of the public at the offices of the Councils with the exception of any report which the Secretary to the Joint Committee determines relates to items which in his or her opinion are likely to be considered at a time when the meeting is not to be open to the public.

24. Minutes of the meeting shall be published by the Host Authority to the extent required by Part VA of the Local Government Act 1972.

25. If a member of the public interrupts proceedings, the Chairman will warn the person concerned. If they continue to interrupt, the Chairman will arrange for their removal from the meeting room and will suspend the meeting until the member of the public has left or been removed.

26. If there is a general disturbance in any part of the meeting room open to the public, the Chairman may call for that part to be cleared.

27. **Overview and Scrutiny**

27.1 Each Council has overview and scrutiny committees which have the right to scrutinise the operation of the Joint Committee and the Joint Committee and the Host Authority will co-operate with reasonable requests for information from any of the Councils' overview and scrutiny committees.

27.2 The decisions of the Joint Committee are not subject to call-in.

28. **Regulation of Business**

28.1 Any ruling given by the Chairman as to the interpretation of this constitution with respect to the regulation of proceedings at meeting shall be final.

28.2 Subject to the law, the provisions of this Constitution and the terms of any contract, the Joint Committee may decide how it discharges its business.

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SCHEDULE 4

Terms of reference for the Officer Working Group

1. The Officer Working Group is a working group of officers appointed by the Councils whose role is to provide a central resource for advice, assistance, guidance and support for the Joint Committee (and also if requested for the Councils as a collective group of investors in the Operator).
2. The Officer Working Group will work with the Joint Committee to support the functions of the Joint Committee as set out in the Joint Committee's Terms of Reference.
3. The Officer Working Group will provide technical support at meetings of the Joint Committee, for example by proving and delivering performance management reports for the Joint Committee on all aspects relating to the provision of services by the Operator.
4. The Officer Working Group will act as a conduit for the Joint Committee to communicate back to the respective Councils and/or direct to the Operator. It will do so in liaison with the client support unit established by the Councils to oversee the Contract and the Service.
5. The Officer Working Group will operate in accordance with the shared objectives of the Pool as set out at **Clause 3** and Schedule 1 and within any budget and policies set by the Joint Committee.
6. The Officer Working Group may be assisted by external professional advisers appointed by the Joint Committee.

SCHEDULE 5

Cost sharing

Part 1 Sharing of Pool establishment and running costs

A Pool Establishment Costs

1. For the purpose of this Schedule 5 Pool Establishment Costs are the costs of creating the Pool including but not limited to:
 - 1.1 Strategic and technical advice
 - 1.2 External legal advice
 - 1.3 Project management
 - 1.4 Financial and taxation advice
 - 1.5 Costs of undertaking the procurement of the Operator
2. Pool establishment costs shall be shared equally between the Councils.

B Running Costs

Operator Costs

3. For the purpose of this Schedule 5 Operator Costs are the costs payable to the Operator or investment managers as follows:
 - 3.1 Costs payable to the Operator or investment managers will be made in accordance with the Operator Contract or such arrangements as are made with investment managers.
 - 3.2 Where these costs are calculated based on the value of investments under management these costs will be borne by each Council in accordance with the agreed fee arrangements for each sub-fund as set out in the prospectus for each sub-fund or in accordance with the Operator Contract. To the extent that the general costs payable to the Operator for the operation of the Vehicle are calculated based on a flat fee then that fee shall be shared equally between the Councils.
 - 3.3 Operator costs incurred in the creation of a new sub-fund shall be allocated back to the sub-fund and will therefore be apportioned to those Councils investing based on the assets under management in that sub-fund as set out in the prospectus approved by the Joint Committee and the contract entered into pursuant to that agreement.
 - 3.4 Where the Operator or a Council incurs charges or liabilities in circumstances where it would be inequitable to apply the provision of clauses 3.1-3.3 above the Joint Committee may decide that one or more Councils should pay some or all of those costs or charges to the Operator or to a Council as the case may be so as to reflect the responsibility for those charges in an equitable way and the Councils affected shall make payments to reflect the decision of the Joint Committee. Before making a decision that costs should be borne differently in a way which it considers to be more equitable under this paragraph the Joint Committee must allow any Council which would be adversely affected the opportunity to make written representations..

Other Costs

4. For the purpose of this Schedule 5 Other Costs are the costs of operating the Pool excluding Pool Establishment Costs and Operator Costs including but not limited to the cost of:

- 4.1 Strategic and technical advice
- 4.2 Legal advice
- 4.3 Project management
- 4.4 Financial and taxation advice
- 4.5 The cost of overseeing and supervising the operation of the Operator Contract including the cost of the Client Unit and the Host Authority and including the costs of any procurement and appointment of any contractor to provide advisers services.
5. Other Costs shall be shared equally between the Councils and shall be reviewed annually.
6. Where the Operator or a Council incurs charges or liabilities in circumstances where it would be inequitable to apply the provision of clause 5 the Joint Committee may decide that one or more Councils should pay some or all of those costs or charges to the Operator or to a Council as the case may so as to reflect the responsibility for those charges in an equitable way and the Councils affected shall make payments to reflect the decision of the Joint Committee. Before making a decision that costs should be borne differently in a way which it considers to be more equitable under this paragraph the Joint Committee must allow any Council which would be adversely affected the opportunity to make written representations.

C Asset Transition Costs

7. For the purpose of this Schedule 5 Asset Transition Costs are the costs incurred when transferring assets from each Council into vehicles managed by the Operator to become Pool Assets. These costs include but are not limited to:
 - 7.1 Transition manager fees
 - 7.2 Duties and taxes
 - 7.3 Buy and sell spreads
 - 7.4 Market and opportunity costs
8. Asset Transition Costs will be borne by each Council on its own assets transferred to or removed from the Vehicle or transitioned between managers of sub-Funds in the Vehicle.

Part 2 Sharing of costs relating to withdrawal

9. Should any Council give notice to withdraw from this Agreement under Clause 12 hereof then the Former Council will be required to pay all costs which that Council would have had to pay if it had continued to be a member of the Pool until the expiry of the Relevant Period including its share of Pool Establishment Costs, Operators Costs and Other Costs unless the Joint Committee agrees otherwise.

In this clause the "Relevant Period" means the period between the Withdrawal Date for the Council concerned and the first of the following dates which occur on or after the Withdrawal Date:

- (a) The date on which the Operator Contract comes to an end;
 - (b) The date on which the Operator Contract would have come to an end but for the fact that it is extended by the Councils.
10. All costs of withdrawing assets, including any dilution levies, from the Vehicle shall be borne by each Council in accordance with the terms on which they are invested with the Operator.

11. Payments made by a Former Council shall be made at the same time and in the same manner as if that Former Council had not withdrawn from this agreement.

Part 3 Sharing of costs on termination

12. Should this Agreement be terminated in accordance with Clause 13 of this Agreement the Councils will determine any outstanding amounts due to the Operator and to any other parties in respect of this Agreement.
13. Should this Agreement be terminated prior to appointment of the Operator, all costs shall be shared equally between the Councils.
14. Such costs shall include but are not limited to:
 - 14.1 Contractually committed costs not yet paid
 - 14.2 Liabilities that may be imposed by parties to this Agreement or contractually engaged third parties
15. Should this Agreement be terminated after the appointment of the Operator the following shall apply:
 - 15.1 Costs of withdrawing assets from the Vehicle shall be borne by each Council according to their own assets withdrawn. These may include any dilution levies as defined in the relevant sub-fund prospectuses or similar investment scheme documentation.
 - 15.2 Any other costs which shall include but are not limited to:
 - 15.2.1 Contractually committed costs not yet paid
 - 15.2.2 Liabilities that may be imposed by parties to this Agreement or contractually engaged third parties

shall be shared equally by the Councils and any Former Councils whose Relevant Period ends on or after the date of termination of this Agreement. In this paragraph "Relevant Period" has the same meaning as in paragraph 9.

16. The Joint Committee may agree that the liability of one or more Former Councils under paragraph 15.2 should be reduced, avoided or allocated other than in equal share to the extent that it considers that it would be inequitable to require that Former Council to pay or to pay an equal share.

Part 4 Sharing of cost on addition of another party

17. Should this Agreement be varied in accordance with Clause 5.6 hereof to provide for the addition of a further pension administering authority or authorities then
 - 17.1 that pension administering authority or authorities shall on becoming a party to this Agreement pay a proportionate share of the pool establishment costs calculated in accordance with Part 1 of this Schedule 5 as reflects the number of parties to this Agreement at the moment after the new party joins.
 - 17.2 that share shall be immediately paid to the Councils who were parties to this Agreement immediately prior to the variation in equal shares.
18. The Joint Committee may agree to waive payment of part or all of the pool establishment costs if it considers it to be in the interests of the pool to do so.

Part 5 Sharing of Host Authority and Client Unit Costs

19. Costs incurred in the operation of the Joint Committee (including the costs of officers providing support to the Joint Committee through the Officer Working Group in accordance with this Agreement) will be borne by the Council incurring them.
20. Costs incurred by the Host Authority in providing clerking and other services required of it as Host Authority by the Joint Committee will be shared equally between the Councils and, with respect to any Relevant Period, any Former Councils.
21. Costs incurred by any Council with respect to provision of the Client Unit or undertaking work commissioned from that authority by the Joint Committee will be shared equally between the Councils and, with respect to its Relevant Period, former Councils, with respect to any such services commissioned.

Part 6 Litigation Costs

22. The cost of
 - 22.1 defending a claim brought against one or more Councils or the Joint Committee arising from any activity undertaken by that Council or Councils on behalf of the Joint Committee or undertaken by that Council or Councils in accordance with this Agreement
 - 22.2 bringing any legal proceedings authorised by the Joint committeeincluding the cost of any award made by any court, tribunal or other body having the jurisdiction to require any payment to be made by any Council or Former Council shall be shared equally unless the Joint Committee agrees that it would be more equitable for the cost to be borne differently and the Councils affected shall make payments to reflect the decision of the Joint Committee.
23. Before making a decision that costs should be borne other than equally under paragraph 22 the Joint Committee must allow any Council which might be adversely affected by that decision the opportunity to make written representations.

Part 7 Payment of shared costs

24. Subject to paragraph 26, no later than 31st December in each and every year the Joint Committee will prepare a budget for the forthcoming financial year (1 April to 31 March) setting out the estimated cost of:
 - 24.1.1 the provision of services to the Joint Committee by the Host Authority
 - 24.1.2 the operation of the Client Unit
 - 24.1.3 the provision of services by advisers appointed by the Joint Committee
 - 24.1.4 any other services provided by a Council or third party which are considered by the Joint Committee to be the shared responsibility of the Councils
 - 24.1.5 any other cost which is to be payable by the Councils equally in accordance with the provisions of this agreement.
25. No later than 1st April in the following year the Host Authority shall invoice each Council and with respect to its Relevant Period Former Council for its estimated share of the costs payable under paragraph 23 and each Council or Former Council as the case may be shall pay such invoice within 28 days from receipt.
26. The Host Authority shall defray any expenditure falling under paragraphs 23.1.1-19.1.5 upon being invoiced for the same by the supplier or by a Council which has incurred or paid any such cost.

27. Within 28 days of the end of each financial year the Joint Committee will determine the actual cost of the services set out in paragraph 23 and the Host Authority shall invoice each Council and with respect to its Relevant Period Former Council for its further share of the costs payable under paragraph 19 and each Council or Former Council as the case may be shall pay such invoice within 28 days from receipt.
28. If any sum payable under this Agreement is not paid on or before the due date for payment the council entitled to payment will be entitled to charge the Council from which payment is due interest on that sum at [INSERT NUMBER]% per annum above the base lending rate from time to time of [INSERT NAME OF BANK] from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis.
29. For the financial year 2017/18 the Joint Committee may prepare estimates but they may be prepared later than 31 December 2016.

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