

Dated _____ 2018

DRAFT

**Northern Pool Operating
Agreement
between**

Tameside Metropolitan Borough Council	(1)
City of Bradford Metropolitan Borough Council	(2)
Wirral Metropolitan Borough Council	(3)

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THIS DEED is made on

2018

BY

- (1) **TAMESIDE METROPOLITAN BOROUGH COUNCIL** of Guardsman Tony Downes House, 5 Manchester Road, Droylsden, Manchester M43 6SF ("**Tameside**");
- (2) **CITY OF BRADFORD METROPOLITAN BOROUGH COUNCIL** of Aldermanbury House, 4 Godwin street, Bradford, BD1 2ST ("**Bradford**"); and
- (3) **WIRRAL METROPOLITAN BOROUGH COUNCIL** of Castle Chambers, 43 Castle Street, Liverpool L2 9SH ("**Wirral**")

(together referred to as the "**Pooling Partners**" and individually as a "**Pooling Partner**")

BACKGROUND

- (A) The Pooling Partners are all councils responsible for the administration of local government pensions within their areas as set out in the Local Government Act 1972.
- (B) The Pooling Partners are each required by Regulation 7(1) of the Investment Regulations to have formulated an investment strategy in accordance with guidance issued by the Secretary of State for Communities and Local Government or such replacement department which has responsibility for the LGPS as issued from time to time. At the date of this agreement the relevant guidance consists of the "*Local Government Pension Scheme: Investment Reform Criteria and Guidance*" ("**November 2015 Guidance**") and the "*Local Government Pension Scheme: Guidance on Preparing and Maintaining an Investment Strategy Statement*", issued in September 2016 but as amended in July 2017 ("**July 2017 Guidance**").
- (C) Regulation 7(2)(d) of the Investment Regulations requires in particular that each LGPS Administering Authority sets out its "*approach to pooling investments, including the use of collective investment vehicles and shared services*" in its investment strategy statement. [do we want to include copies of these as a schedule at the back of the document?]
- (D) Having regard to their obligations under the Investment Regulations, the Pooling Partners have therefore agreed to establish and participate in a formal joint committee the "*Northern Pool Joint Committee*", pursuant to section 101 and section 102 of the Local Government Act 1972.
- (E) The Pooling Partners shall carry on the Pooling Collaboration (as defined below) under the terms of this Agreement with the Northern Pool Joint Committee overseeing its governance.

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- (F) Neither the execution of this Agreement nor the carrying on of activities under it is intended by the Pooling Partners to constitute the carrying on of any “*regulated activity*” under section 19 of the Financial Services and Markets Act 2000 (“FSMA”). In particular, the Northern Pool Joint Committee shall not constitute the establishment or operation of a Collective Investment Scheme under s235 of FSMA.

AGREED TERMS

1 INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in this Agreement.

Business Day means a day other than a Saturday, a Sunday or a public holiday in England when banks in London are open for business.

CIPFA Guidance means the guidance published in October 2016 by the Chartered Institute of Public Finance and Accountancy entitled *investment pooling governance principles for LGPS Administering Authorities*.

Commencement Date means [] 2018.

Pooling Partners means the parties to this Agreement, and all other administering authorities within the LGPS who are or become parties to this Agreement at any time.

Financial Year means in the case of the first Financial Year, the period from the Commencement Date to (and including) the following 31 March. For subsequent Financial Years the period between 1 April and 31 March (inclusive) and for the last Financial Year any lesser period necessary.

Host Council means the Pooling Partner appointed in accordance with clause 6 and whose duties are described within that clause.

Investment Regulations means the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 (SI 2016/946).

Joint Governance Committee means the joint committee formed by this Agreement.

LGPS means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under section 7 and 12 of the Superannuation Act 1972 and the provisions of the PSPA 2013.

Member in this Agreement means a member of the Joint Governance Committee appointed in accordance with clause 3.3.

Monitoring Officer means the person designated by each Pooling Partner for the purposes of section 5 of the Local Government and Housing Act 1989.

Northern Pool means the collaboration by the Pooling Partners in respect of their pooling of investments and use of collective investment vehicles and shared services.

Pension Board means a local pension board or a joint local pension board within the meaning given to each phrase by regulation 106 of the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and section 5 of the PSPA 2013.

Pool Custodian means the FCA regulated entity appointed to act as 'master record keeper' for all assets of the LGPS funds administered by the Pooling Partners and to provide additional services to the Northern Pool and the Pooling Partners as set out in the relevant contracts.

Pooling Collaboration means the arrangements for asset pooling under the Northern Pool. The creation of a framework of strong internal governance to achieve improved net investment returns and facilitate increased investment in infrastructure carried on by the Pooling Partners as described by this Agreement.

Pooling Contribution means as defined in clause 8.1.

PSPA 2013 means the Public Service Pensions Act 2013.

S151 officer means the person appointed by each Pooling Partner for the purposes of section 151 of the Local Government Act 1972.

Secretary of State means the Ministry of Housing, Communities and Local Government or such replacement department which has responsibility for the LGPS.

Shared Objectives has the meaning given by clause 5.

Terms of Reference means the governing framework document concerning the functions and operations of the Joint Governance Committee as set out in Schedule 3.

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular include the plural and in the

plural include the singular.

- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation made from time to time under it.
- 1.9 A reference to **writing** or **written** includes faxes and email.
- 1.10 Documents in **agreed form** are documents in the form agreed by the parties and initialed by them or on their behalf for identification.
- 1.11 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.12 Any words following the terms **include, including, in particular** or **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding them.
- 1.13 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.14 Any reference to the title of an officer or any of the Pooling Partners shall include any person holding such office from time to time by the same or any title substituted thereafter or such other officer of the relevant Pooling Partner as that Pooling Partner may from time to time appoint to carry out the duties of the officer referred to.

2 COMMENCEMENT AND CESSATION OF THE MEMORANDUM OF UNDERSTANDING

2.1 The Agreement shall commence on the Commencement Date. For the avoidance of doubt, this Agreement is only effective when each Pooling Partner has executed it and each Pooling Partner shall be of equal status with equal rights except where expressly stated otherwise and shall continue on the terms of this Agreement until the earlier of the following:

- (a) all Pooling Partners agree in writing to its termination; or
- (b) there is only one remaining Constituent Authority who has not exited this Agreement in accordance with clauses 19 or 20.

3 FORMATION OF THE JOINT GOVERNANCE COMMITTEE

3.1 The Pooling Partners by this Agreement hereby form the Joint Governance Committee pursuant to section 101(5) and 102(1) of the Local Government Act 1972 for the purposes of overseeing and reporting on the performance of the Northern Pool. The Joint Governance Committee shall not be responsible for formulating or revising the investment strategy described by regulation 7 of the Investment Regulations in respect of each or any of the Pooling Partners.

3.2 Meetings of the Joint Governance Committee are subject to the provisions of the Local Government Act 1972 including the provisions on access to information and meetings held in public.

3.3 Unless agreed otherwise, the membership of the Joint Governance Committee shall be the chair and deputy-chair of each of the Pooling Partners. In addition there shall be three trade union representatives who shall have the appropriate technical skills to represent scheme members' interests in investment matters and should represent the interests of members from the Greater Manchester, Merseyside and West Yorkshire regions.

3.4 The Joint Governance Committee shall undertake its role and act in accordance with the Terms of Reference set out in Schedule 3 and undertake the matters set out in Schedule 2 and shall seek and have regard to the advice of officers and any professional advisors appointed in carrying out its functions under this Agreement.

3.5 Every meeting shall be governed by the procedure and requirements set out in Schedule 4.

3.6 A programme of training will be provided to Members having regard to CIPFA Guidance and the training provided to Members in their roles on their respective Pooling Partner

pension committees. Any failure to undertake the required training shall be a matter for consideration by the Joint Governance Committee.

4 DECISION MAKING

4.1 The Pooling Partners have identified the following two categories of decisions together with the means by which they will be taken:

- (a) **"Joint Governance Committee Matter"**: means a matter, identified in Schedule 2 which is to be decided upon at a quorate meeting of the Joint Governance Committee by those present and entitled to vote and any such decision will be binding on all of the Pooling Partners;
- (b) **"Matters Reserved to the Pooling Partners"**: means a matter identified in Schedule 1, which will have to be referred to each Pooling Partner for decision (having regard to any recommendation to be made thereon by the Joint Governance Committee). Such matter requiring a decision shall not be dealt with by the Joint Governance Committee until the matter has been determined by all of the Pooling Partners. If the Constituent Authorities fail to reach a unanimous decision in respect of such matter then the matter shall be referred under clause 33 (Alternative Dispute Resolution) as a dispute for resolution.

5 SHARED OBJECTIVES

5.1 The Shared Objectives of the Joint Governance Committee are to:

- (a) improve the risk-adjusted net investment returns of the Pooling Partners;
- (b) enhance stakeholder engagement activities;
- (c) facilitate increased investment in UK infrastructure;
- (d) assist the Pooling Partners in ensuring continued compliance with the LGPS Investment Regulations and the Pooling Criteria and Guidance issued in November 2015.

5.2 The Shared Objectives will be reviewed by the Joint Governance Committee and the Pooling Partners annually. Where any revisions are agreed by the Joint Governance Committee the revised Shared Objectives shall be sent to all Pooling Partners for their approval.

6 HOST COUNCIL

6.1 The Pooling Partners (acting severally) have agreed, with effect from the Commencement Date, that Tameside Metropolitan Borough Council will be the Host Council for the Pooling Collaboration which shall be carried out for and on behalf of itself and the Pooling Partners and Tameside Metropolitan Borough Council agrees to

act in that capacity subject to and in accordance with and to the extent provided for by the terms of this Agreement. For the avoidance of doubt the role of Host Council, unless otherwise agreed by the Joint Governance Committee, includes:-

- (a) to act as the employing authority for any staff engaged in the discharge of the Pooling Collaboration's functions (appointing, employing or accepting the secondment of staff) in accordance with this Agreement;
- (b) being the point of contact for the purposes of managing the Pooling Collaboration;
- (c) providing such administrative resources and facilities that may be necessary for the purpose of discharging the Pooling Collaboration and hold all Pooling Contributions;
- (d) providing such governance and administrative services that may be necessary for the purpose of supporting the Pooling Collaboration including arranging and clerking of meetings;
- (e) providing training for Members to support their role on the Joint Governance Committee in line with the training plan and in accordance with clause 3.7.
- (f) for the purposes of the Pooling Collaboration require their Section 151 Officer and Monitoring Officer (or in their absence their deputies) to undertake oversight and review of the operation of the Pooling Collaboration and decisions of the Joint Governance Committee on behalf of all of the Pooling Partners;
- (g) power to enter into contracts for supplies and services as required for the purposes of the Pooling Collaboration;

6.2 For the avoidance of doubt the duties and responsibilities of the Host Council pursuant to this Agreement shall only bind the Host Council to the extent that they have been resourced by the Pooling Partners through this Agreement.

6.3 Save and except where otherwise required by law all staff employed by the Host Council pursuant to this Agreement shall be employed on the Host Council's relevant terms and conditions of employment and related staff policies including salary structures.

6.4 A replacement Host Council may be appointed by a majority decision of the Pooling Partners provided that the replacement Host Council agrees.

6.5 If the Host Council withdraws from the Pooling Collaboration pursuant to clause 19 (Voluntary Exit) or clause 20 (Compulsory Exit) then a replacement Host Council will be appointed by a majority decision of the Constituent Authorities provided that the replacement Host Council agrees. The withdrawing Host Council will not have the right to vote in regard to any such appointment.

6.6 Where a replacement Host Council is appointed pursuant to Clause 6.4 or 6.5 above, any reference to Tameside Metropolitan Borough Council (in its capacity as the initial Host Council) shall be read with reference to the replacement Host Council from the effective date of the replacement.

6.7 Where TUPE applies in connection with the appointment of any replacement Host Council, then the Pooling Partners shall comply with the provisions of Schedule 5.

6.8 For the duration of this Agreement, the Host Council shall act diligently and in good faith in all its dealings with the other Pooling Partners.

6.9 For the duration of this Agreement, the Pooling Partners shall act diligently and in good faith in all their dealings with the Host Council and shall use their reasonable endeavours to assist the Host Council to support the Pooling Collaboration.

7 LIABILITIES AND INDEMNITIES FOR THE HOST COUNCIL

7.1 Nothing in this Agreement will make the Host Council liable in respect of anything done or omitted to be done by a Pooling Partner up to the Commencement Date.

7.2 The Host Council shall be indemnified from and against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential loss, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable costs and expenses) arising from the performance of its functions authorised pursuant to clause 6 save in the case of its willful default or fraud.

8 COMMITMENT OF THE POOLING PARTNERS AND CONTRIBUTIONS

8.1 Subject to clause 8.2, the Pooling Partners agree to pay the contributions, which shall be calculated equally, of the estimated governance, procurement and administration costs.

8.2 The Pooling Partners shall meet the costs of ad hoc projects to which they are a party equally between the Pooling Partners.

8.3 The Pooling Partners agree to pay the Pooling Contributions to the Host Council on such dates, and at such frequency, as is agreed or otherwise annually as demanded.

8.4 All Pooling Contributions shall be made by way of payment to the bank account notified to the Pooling Partners by the Host Council for the purposes of the Pooling Collaboration. The Host Council shall maintain a separate account or accounts as appropriate for all monies received or expended in connection with the Pooling Collaboration in a manner which complies with their accounting arrangements.

8.5 Following the termination of this Agreement, once the costs of the Host Council have been met, the sum standing to the credit of the account or accounts in which Pooling

Collaboration funds are held shall be returned to the then remaining Pooling Partners on an equal basis.

8.6 Following the termination of this Agreement, where any further contribution is required, or repayments are to be made, the Pooling Partners shall decide the following:

- (a) the total amount;
- (b) the apportionment of such contribution or repayment between the Pooling Partners; and
- (c) the form of such contribution or repayment.

In the absence of any agreement to the contrary, such contributions or repayments shall be by or to all of the Pooling Partners equally.

8.7 For the avoidance of doubt, any charges incurred in respect of investment management of the Northern Pool shall be attributed to each Pooling Partner by reference to the assets under management for that Pooling Partner and the investment management charges applicable are not determined by this Agreement.

9 ACCOUNTS

9.1 The Host Council shall keep proper books of account (which expression shall include any computerised accounting system for the time being used by the Pooling Collaboration) and shall be responsible for ensuring that full and proper entries of all receipts and payments are promptly recorded in them. The books of account shall be kept at the premises of the Host Council and be made available for inspection by all of the Pooling Partners (who may also take copies). The Host Council shall make available on reasonable request such information as is required by any Pooling Partner to prepare their own accounts or respond to any internal or external audit.

9.2 The Host Council shall ensure that the contributions and payments made by each Pooling Partner shall be held in an account in the name of the Host Council which does not breach regulation 6 of the Investment Regulations.

9.3 The Host Council shall prepare annual accounts in relation to each Financial Year for the Pooling Collaboration in accordance with the appropriate code of practice on accounting and the regulations which relate to accounting and audit as applicable to local authorities by no later than 31 May in the following Financial Year.

9.4 The Host Council shall be responsible for ensuring that the accounts relating to the Pooling Collaboration are audited where and when required by law or other competent authority and shall make copies of the audited accounts available to all of the Pooling Partners

9.5 The Joint Governance Committee may hold a reserve of funds for the purposes of

meeting the costs of the Pooling Collaboration. Where the reserve exceeds 40% of the budget for the forthcoming year then the amount by which the reserve exceeds that sum may be repaid to the Pooling Partners and such repayment shall be in proportion to the total amount contributed (including any interest applicable) by each unless the Joint Governance Committee decides to the contrary.

10 INVESTMENT MANAGEMENT COSTS

- 10.1 In accordance with clause 8.1, each Pooling Partner shall bear its own costs in respect of investment management they incur or expect to incur in the Pooling Collaboration which shall include all transition costs for the investment and disinvestment of assets.

11 INTELLECTUAL PROPERTY

11.1 Any intellectual property developed by any Pooling Partner for the purposes of the Pooling Collaboration shall be retained by the Pooling Partners and each Pooling Partner will grant all of the other Pooling Partners a non-exclusive, perpetual, non-transferable and royalty free licence to use, modify amend and develop it for the purpose of the Pooling Collaboration whether or not the Pooling Partner granting the licence remains a party to this Agreement. All costs and expenses relating to such intellectual property shall be borne by the Pooling Partners and the other Pooling Partners shall indemnify the Pooling Partner or Pooling Partners in whom such property is vested against all liabilities that may arise directly or indirectly in respect of the use of it.

12 REPORTS

- 12.1 The Joint Governance Committee shall oversee the Pooling Collaboration and ensure that the Strategic Objectives are met.
- 12.2 On a quarterly basis the Pool Custodian will provide the Joint Governance Committee via the Host Council with a consolidated report of the assets of the LGPS funds administered by the Pooling Partners.
- 12.3 To ensure that the Pooling Partners are kept up-to-date with the performance of the Pooling Collaboration, the Joint Governance Committee shall provide all reports and minutes of Joint Committee meetings to the Pooling Partners.

13 INSURANCE

- 13.1 Where the operation of the Pooling Collaboration is not covered by any existing insurance of the Pooling Partners, the Host Council shall effect and at all times keep in force (for the benefit of the Members of the Joint Governance Committee) such policies of insurance for such amounts as it shall decide. Such policies shall be maintained at the expense of the Pooling Partners and shall be an administration cost of this Pooling

14 DUTIES AND POWER

14.1 Each Pooling Partner shall at all times:

- (a) use its reasonable skills and endeavours to promote and carry on the Pooling Collaboration for the benefit of the Pooling Partners, and conduct itself in a proper and responsible manner;
- (b) devote such time and attention as the Pooling Partners may decide in writing to be necessary and appropriate to the Pooling Collaboration;
- (c) comply with all legislation, regulations, professional standards and other provisions as may govern the conduct of the Pooling Collaboration, or be determined by the Pooling Partners as standards to be voluntarily applied to the Pooling Collaboration;
- (d) show the utmost good faith to the other Pooling Partners in all transactions relating to the Pooling Collaboration and give them a true account of, and full information about, all things affecting the Pooling Collaboration;
- (e) inform the Pooling Partners without delay on becoming party to any legal proceedings in connection with the Pooling Collaboration;
- (f) punctually pay and discharge its present and future debts and financial obligations;
- (g) shall not do or fail to do anything which shall bring any of the other Pooling Partners, or itself, into disrepute;
- (h) obtain all necessary consents sufficient to carry on their duties to the Pooling Collaboration.

14.2 No action which would otherwise be a breach of this clause shall constitute a breach where the Pooling Partner was required to carry out that action in compliance with a statutory duty or order of any court, tribunal or ombudsman.

15 DELEGATION

15.1 Prior to the commencement of the Pooling Collaboration the Pooling Partners shall put in place such authorisations as are required within their internal governance arrangements to:

- (a) delegate the making of the decisions set out in Schedule 2 (Joint Governance Committee Matters) to the Joint Governance Committee;
- (b) delegate any other matter which is required to comply with the obligations of this

Pooling Collaboration, including delegations to its own officers and to the Host Council where required.

- 15.2 The Pooling Partners shall review and where necessary amend their delegations throughout the duration of the Pooling Collaboration to ensure that they can comply with the provisions of this Agreement.
- 15.3 The Joint Governance Committee may appoint contractors or agents to undertake tasks, advise on or support the implementation of its functions.
- 15.4 For the avoidance of doubt, strategic asset allocation will be set by each of the Pooling Partners with the selection of individual investments and investment managers carried out by appropriately qualified and experienced individuals, operating under the legal framework of specialist investment vehicles where appropriate.

16 OBLIGATIONS ON POOLING PARTNERS

- 16.1 Without prejudice to the terms of this Agreement, the Pooling Partners, on an individual basis, commit to the implementation of the Pooling Collaboration within the appropriate legal framework and to use their reasonable endeavours to ensure the success of the Pooling Collaboration.
- 16.2 Nothing in this Agreement shall fetter the discretion of each Pooling Partner to formulate and revise an investment strategy appropriate for their fund within the LGPS pursuant to regulation 7 of the Investment Regulations.

17 INDEMNITY

- 17.1 Any Pooling Partner who is in material breach of any of the provisions of this Agreement shall indemnify the other Pooling Partners from and against all liabilities, costs, expenses, damages and losses, (including but not limited to any direct, indirect or consequential loss, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable costs and expenses) resulting from that breach, without prejudice to any other right or remedy of the other Pooling Partners howsoever arising.

18 POLICIES AND PROCEDURES

- 18.1 The Host Authority shall prepare any necessary policies and procedures which the Joint Governance Committee decides are appropriate, in accordance with applicable law and regulation, competent authority, and CIPFA Guidance, and having had regard to applicable guidance specific to local government management of funds or accounting and auditing requirements.
- 18.2 Where any policy or procedure provided for under this Agreement requires the Pooling Partners to address or copy any communication or similar to any contract

management or co-ordination function the Joint Governance Committee will advise the Pooling Partners of that requirement in writing. As of the date of receipt of an advisory under this clause the Pooling Partners shall address or copy any communication as advised.

19 VOLUNTARY EXIT

- 19.1 Any Pooling Partner (the "**VE Authority**") may exit from the Pooling Collaboration by giving not less than 18 (eighteen) months' written notice to the Host Council of its intention to exit the Pooling Collaboration and the date of expiration of that notice is the 31 March which next falls after or is coincident with the end of the 18 (eighteen) month notice period provided that the Pooling Partners may agree with the VE Authority that a different notice period applies (the "**Exit Date**").
- 19.2 A VE Authority may exit the Pooling Collaboration and be released from its obligations under this Agreement (other than clause 21) provided that:
- (a) it has satisfied all of its obligations up to the Exit Date;
 - (b) it has satisfied its share of the costs and expenses up to the Exit Date, as well as any necessary costs and expenses to facilitate the exit whether or not incurred after the Exit Date;
 - (c) it redeems or transitions (subject to liquidity constraints and meeting relevant contractual requirements) its investments from the Northern Pool as agreed appropriate by the Joint Governance Committee;
 - (d) its representatives on the Joint Governance Committee resign on or before the Exit Date.
- 19.3 With effect from the date of the notice given by the VE Authority pursuant to clause 19.1 the Member nominated by the VE Authority for the purposes of clause 3.3 shall cease to have any voting rights for the purposes of the Joint Governance Committee and the VE Authority shall cease to be a Pooling Partner.
- 19.4 For the avoidance of doubt, the VE Authority shall remain liable to make the Pooling Contributions which are due prior to the Exit Date.

20 COMPULSORY EXIT

- 20.1 The Pooling Partners (other than the CE Authority) may by majority decision compulsorily require any Pooling Partner (the "**CE Authority**") to leave the Pooling Collaboration, by the Host Council (or in the case of the Host Council being the CE Authority, any other Pooling Partner) giving the CE Authority written notice if the CE Authority:
- (a) commits any serious breach or persistent breaches of this Agreement;

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- (b) fails to pay any money owing by it to the Host Council within 28 (twenty-eight) days of a written request for payment from the Host Council;
 - (c) fails to account for, or pay over or refund any money received and belonging to the Pooling Partners within 28 (twenty-eight) days after being so required by notice from the Host Council;
 - (d) wilfully neglects, refuses or omits to perform its duties, obligations and responsibilities under this Agreement; or
 - (e) is guilty of conduct which, in the reasonable opinion of the other Pooling Partners, is likely to have a serious adverse effect on the Pooling Collaboration;

provided that in each case the CE Authority is first given 28 days following receipt of the written notice to remedy the breach or issue described in paragraphs (a) to (e) and the CE Authority has failed to remedy such breach or issue or to take reasonable steps to do so.

20.2 The effective date of the CE Authority being required to leave the Pooling Collaboration is the 31 March which next falls after or is coincident with the period of 18 (eighteen) month after the notice given in clause 20.1 above provided that the other Pooling Partners may notify the CE Authority that a different notice period applies (the "**Compulsory Exit Date**").

20.3 The CE Authority shall exit the Pooling Collaboration from the Compulsory Exit Date and must prior to the Compulsory Exit Date:

- (a) have satisfied all of its obligations up to the Compulsory Exit Date;
- (b) have satisfied its share of the costs and expenses up to the Compulsory Exit Date, as well as any necessary costs and expenses to facilitate the exit whether or not incurred after the Compulsory Exit Date.
- (c) have redeemed or transitioned (subject to liquidity constraints and meeting relevant contractual requirements) its investments from the Northern Pool as agreed appropriate by the Joint Governance Committee;
- (d) have ensured that its representatives on the Joint Governance Committee have resigned on or before the Compulsory Exit Date.

20.4 With effect from the date of the notice given by the Host Council to the CE Authority pursuant to clause 20.1 the Member (and any nominated deputy for the purposes of clause 3.4) nominated by the CE Authority for the purposes of clause 3.3 shall cease to have any voting rights for the purposes of the Joint Governance Committee and shall cease to be a Pooling Partner.

20.5 For the avoidance of doubt, the CE Authority shall remain liable to make the Pooling

Contributions which are due prior to the Compulsory Exit Date and liable to the continuing liability provisions of clause 21.1.

21 FURTHER PROVISIONS RELATING TO A VE AUTHORITY OR A CE AUTHORITY

Continuing liability

- 21.1 Where any Pooling Partner exits from this Agreement in accordance with Clause 19 or 20 they shall remain liable to the extent they would have been were they still party to this Agreement for any acts, omissions, costs and expenses arising from acts taken or decisions made during the period in which that Pooling Partner was a party to this Agreement.
- 21.2 Any Pooling Partner who enters this Agreement after the Commencement Date shall have liability for any acts, omissions, costs and expenses arising from acts taken or decisions made from the date of their entry only.

22 NEW POOLING PARTNER

- 22.1 The Pooling Partners shall consider applications from other administering authorities of funds within the LGPS to join the Pooling Collaboration (a "**New Member Application**").
- 22.2 A New Member Application will be considered on the merits of its business case and the conditions which the Pooling Partners consider appropriate from time to time.
- 22.3 A New Member Application will only be approved by the Pooling Partners at their absolute discretion and, subject to regulation 8 of the Investment Regulations, there shall be no obligation under the terms of this Agreement for a New Member Application to be accepted.

23 CONFIDENTIALITY

- 23.1 For the purposes of this Agreement, **Confidential Information** means, any information which has been certified as exempt information in accordance with Section 100(i) of the Local Government Act 1972 and all confidential information (however recorded or preserved) disclosed by a Pooling Partner or its representatives or advisers to another Pooling Partner and his representatives or advisers (except where by law the information cannot be retained as confidential) concerning:
- (a) any information relating to the prospective business, technical processes, computer software or intellectual property rights of the Pooling Collaboration;
 - (b) all documents, papers and property that may have been made or prepared by, or at the request of, any Pooling Partner and which are marked as being exempt information or confidential and which come into any Pooling Partner's possession or under its control in the course of the Pooling Collaboration;

and

- (c) compilations of two or more items of such information and all information that has been, or may be, derived or obtained from any such information which, at any time, comes into any Pooling Partner's possession or under its control in the course of the Pooling Collaboration and which the Pooling Collaboration regards or could reasonably be expected to regard as confidential, whether or not such information is, in itself, confidential, marked as "confidential" or reduced to tangible form.

23.2 Save as provided otherwise in this agreement either expressly or by implication, each Pooling Partner undertakes that it shall not, at any time, disclose to any person any Confidential Information of the other Pooling Partners and shall use its reasonable endeavours to keep all Confidential Information of the other Pooling Partners confidential (whether it is marked as such or not) except as permitted by clause 23.3.

23.3 Each Pooling Partner may disclose the other Pooling Partner's Confidential Information:

- (a) to its representatives or advisers who need to know such information for the purposes of carrying out the Pooling Partner's obligations under or in connection with this Agreement. Each Pooling Partner shall ensure that its representatives or advisers to whom it discloses the other Pooling Partner's Confidential Information comply with this clause.
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority including an ombudsman.

24 FREEDOM OF INFORMATION

24.1 Each Pooling Partner acknowledges that the other Pooling Partners and the Joint Governance Committee are subject to the requirements of the Freedom of Information Act 2000 ("FoIA") and each Pooling Partner shall where reasonable assist and cooperate with the other Pooling Partners (at their own expense) to enable the other Pooling Partners to comply with these information disclosure obligations.

24.2 Where a Pooling Partner receives a request for information under the FoIA in relation to information which it is holding on behalf of any of the other Pooling Partners in relation to the Pooling Collaboration, it shall:

- (a) transfer the request for information to the other Pooling Partners as soon as practicable after receipt and in any event within 2 (two) Business Days of receiving a request for information;
- (b) provide the other Pooling Partners with a copy of all information in its possession or power in the form that the Pooling Partners reasonably

require within 10 (ten) Business Days (or such longer period as the Pooling Partners may specify) of the Pooling Partner requesting that information; and

- (c) provide all necessary assistance as reasonably requested by the other Pooling Partners to enable the Pooling Partner to respond to a request for information within the time for compliance set out in the FoIA.

24.3 Where a Pooling Partner receives a request for information under the FoIA which relates to this Agreement or the Pooling Collaboration it shall;

- (a) advise the person making the request that the information is held by another public authority being the Joint Governance Committee and that the request has been passed to that public authority to respond;
- (b) transfer the request for information to the Host Council on behalf of the Joint Governance Committee as soon as practicable after receipt and in any event within 2 (two) Business Days of receiving a request for information;
- (c) provide the Host Council with a copy of all information in its possession or power in the form that the Host Council reasonably require within 10 (ten) Business Days (or such longer period as the Pooling Partners may specify) of the Pooling Partner requesting that information; and
- (d) provide all necessary assistance as reasonably requested by the Host Council to enable the Host Council to respond to a request for information on behalf of the Joint Governance Committee within the time for compliance set out in the FoIA.

24.4 The Pooling Partners or the Host Council shall be responsible for determining in their absolute discretion whether any information requested under the FoIA:

- (a) is exempt from disclosure under the FoIA;
- (b) is to be disclosed in response to a request for information.

24.5 Each Pooling Partner acknowledges that the other Pooling Partners and the Joint Governance Committee may be obliged under the FoIA to disclose information:

- (a) without consulting with the other Pooling Partners where it has not been practicable to achieve such consultation; or
- (b) following consultation with the other Pooling Partners and having taken their views into account.

25 DATA PROTECTION

25.1 The Pooling Partners shall comply with the Data Protection Act 1998.

26 DISSOLUTION

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- 26.1 No Constituent Authority shall be capable of dissolving the Pooling Collaboration unilaterally by means of a notice.
- 26.2 The Pooling Collaboration and this Agreement shall be terminated upon the unanimous agreement of all of the Pooling Partners.
- 26.3 Each Constituent Authority shall act in good faith in the wind up of the Pooling Collaboration following the unanimous decision to dissolve as soon as reasonably practicable thereafter, and all costs and expenses shall be borne equally by the Pooling Partners.

27 ENTIRE AGREEMENT

- 27.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 27.2 Each Pooling Partner acknowledges that, in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 27.3 Each Pooling Partner agrees that it shall have no claim for innocent or negligent misrepresentation (or negligent misstatement) based on any statement in this agreement.
- 27.4 Nothing in this clause shall limit or exclude any liability for fraud.

28 NOTICES

- 28.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, post, facsimile or email addressed in writing in accordance with this clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:
- (a) if delivered by hand during business hours, at the time of delivery;
 - (b) if delivered by post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays);
 - (c) if delivered by facsimile during business hours, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission; or
 - (d) if delivered by email or other electronic form of communication during business

hours, at the time of transmission provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission.

- 28.2 Where notice is served by hand, facsimile or email outside business hours, it will be deemed to have been served on the next business day.

29 CONTRACTS (THIRD PARTY RIGHTS)

- 29.1 The Pooling Partners as parties to this Agreement do not wish that any of its terms to be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person not a party to this Agreement.

30 SEVERANCE

- 30.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision of part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

- 30.2 If one Pooling Partner gives notice to the other Pooling Partners of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Pooling Partners shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended result of the original provision.

31 AMENDMENTS

- 31.1 No amendment to this Agreement shall be binding unless it is in writing and signed by a duly authorised representative of each of the Pooling Partners and expressed to be for the purpose of such amendment.

32 GOVERNING LAW AND JURISDICTION

- 32.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

- 32.2 Each party irrevocably agrees that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement, its subject matter or formation.

33 ALTERNATIVE DISPUTE RESOLUTION

- 33.1 The Pooling Partners agree:

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- (a) to pursue a positive approach towards dispute resolution with an objective of reaching a consensus without formal dispute resolution and/or legal proceedings and maintaining a strong working relationship between the Pooling Partners;
 - (b) that any dispute between the Pooling Partners in relation to matters covered by this Agreement will be referred to in the first instance to the Chief Executives of the Pooling Partners who may, at their sole discretion, delegate the dispute to the appropriate senior officer within 10 Business Days of written notice of the dispute;
 - (c) that if the Chief Executives or their delegates are not able to resolve the dispute within 5 Business Days of meeting or there is disagreement over a Member matter, then any Member may refer the matter to a mediation facilitated by the Local Government Association or to a suitably qualified and independent person, as recommended by the Chief Executives and the Pooling Partners agree;
 - (d) that where any dispute is agreed to be of a legal or technical nature the parties to the dispute may (but not must) jointly take the opinion of an appropriate expert including opinion of senior legal counsel where appropriate. Such expert opinion must be instructed within 10 days of referral to Chief Executives under sub-clause (b) following which the opinion should be delivered within a further 10 days unless the nature and/or details of the dispute or opinion dictate that an alternative timeframe needs to be followed.
 - (e) that, if after exhausting other methods of dispute resolution, one of the Pooling Partners commences legal proceedings then this will be subject to the exclusive jurisdiction of the Courts of England and Wales.

All costs are borne equally between the Pooling Partners which are party to the dispute unless agreed otherwise by the Joint Governance Committee or ordered by the Courts.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1

Matters Reserved to the Pooling Partners

- 1 Appointment, termination or replacement of the Pool Custodian following the making of a recommendation by the Joint Governance Committee.
- 2 Formulation, approval or revisions of each respective Pooling Partner's investment strategy for the purposes of regulation 7 of the Investment Regulations.
- 3 Admitting a new administering authority within the LGPS to the Northern Pool as a Pooling Partner (pursuant to clause 22).
- 4 Amendment of this Agreement (pursuant to clause 31).
- 5 Termination of this Agreement (pursuant to clause 26).
- 6 Approval of the initial Strategic Objectives and any subsequent amendment.
- 7 Determination of the timing of the transition of the assets held by the LGPS fund for which they are an administering authority into the Pooling Collaboration.
- 8 Setting of policy on how social, environmental and corporate governance considerations are taken into account in the selection, non-selection, retention and realisation of investments.

Schedule 2

Joint Governance Committee Matters

Subject to the terms of the Agreement, the Joint Governance Committee shall undertake those matters which are not Matters Reserved to the Pooling Partners which shall include (without prejudice to the generality of the foregoing):

- 1 Monitoring and benchmarking performance and costs and reporting back to Pooling Partners.
- 2 Making a recommendation on the appointment, replacement or termination of the Pool Custodian to the Pooling Partners.
- 3 Oversight of Responsible Investment activities of the Pooling Partners.
- 4 Engagement with the Pooling Partners to help drive efficiencies.
- 5 Nominating representatives to national structures as appropriate (for example any cross-pool forum or national infrastructure board).
- 6 Overseeing staffing requirements of the Northern Pool investment vehicles.
- 7 Delegation of tasks to officers, including the preparation of reports and draft documents and the undertaking of consultations.
- 8 Development of Northern Pool investment vehicles and opportunities for collaborative working with other investors (including other LGPS pools).
- 9 Appointing and replacing service providers and advisers to the Joint Governance Committee
- 10 Preparing a plan relating to the overall transition of assets in accordance with each Pooling Partner's asset transition plan.
- 11 Dealing with the necessary general management of the Pooling Collaboration.
- 12 Liaison with Pension Boards as appropriate in line with CIPFA Guidance, guidance issued by the Pensions Regulator and other applicable legislation or regulatory guidance.

Schedule 3

Joint Governance Committee - Terms of Reference

The Joint Governance Committee responsibilities are:

1. Delivery of the Pooling Collaboration Strategic Objectives;
2. Report to the Pooling Partners quarterly (and at any other time when the Joint Governance Committee considers it to be necessary) on the matters within their remit including but not limited to the performance of the pooled investment vehicles and the ongoing progress towards meeting the Strategic Objectives;
3. Ensuring that there are an appropriate range of investment vehicles available in order to allow the Pooling Partners to meet their strategic investment aims.
4. From time to time, to review the appropriateness of the existing pooled investment vehicles and to make recommendations to the Pooling Partners;
5. Monitoring the investment performance of the Northern Pool against the agreed set of key performance indicators;
6. Reporting on the performance of the Northern Pool, its costs and other activities, but not limited to, the Pooling Partners, government, the Scheme Advisory Board and the general public;
7. Making recommendations to the Pooling Partners on the termination of the Pool Custodian contract where the performance of the Pool Custodian is considered unacceptable;
8. From time to time reviewing policies in respect of ethical, social and governance matters and voting rights and where appropriate make recommendations to the Pooling Partners as to any changes deemed necessary;
9. Applying any processes or policies that are assigned to it within this Agreement;
10. Monitoring the implementation and effectiveness of the Northern Pool policies and procedures and initiating reviews of these with the Host Authority where required;
11. Providing any analysis or commentary on annual accounts to the Pooling Partners;
12. Approving responses from the Pooling Collaboration in relation to consultations or other matters considered appropriate;
13. Seeking advice from officers and professional advisers where necessary;

Schedule 4

Joint Governance Committee Procedure

1 MEMBERSHIP

- 1.1 The membership of the Joint Governance Committee shall consist of the chair and deputy-chair of each of the Pooling Partners. In addition there shall be three trade union representatives who shall have the appropriate technical skills to represent scheme members' interests in investment matters and should represent the interests of members from the Greater Manchester, Merseyside and West Yorkshire regions.
- 1.2 No substitutes shall be allowed.
- 1.3 The Joint Governance Committee shall not include any non-voting or co-opted members.

2 MEETINGS

- 2.1 Meetings shall be held a minimum of four times per municipal year (being May to May). The anticipated schedule of meetings and the locations in which they will be held will be agreed in advance.
- 2.2 A meeting may be held at such time and place as the Chair of the Joint Governance Committee thinks fit.
- 2.3 A meeting of the Joint Governance Committee may be called by a proper officer of the Host Council on the request of the Chair. Members must declare any conflict of interest in respect of any business being conducted at the meeting which would likely to be regarded to prejudice the exercise of a person's function as a participant in the meeting.
- 2.4 The Chair is responsible for the running of meetings. The Chair shall invite Members expressing a desire to speak in turn. All discussion and debate shall be held through the Chair and the Chair may draw a discussion to a vote at any time where they consider that every Member has been given a fair opportunity to speak.
- 2.5 Members may participate in meetings via telephone subject to the agreement of The Chair.
- 2.6 Minutes will be kept of all meetings. The Chair will sign the minutes of the proceedings at the next suitable meeting.
- 2.7 Notice of meetings
- (a) A notice of meeting specifying the place, date and time of the meeting and containing a statement of the matters to be discussed at the meeting, shall be served on all of the Members of the Joint Governance Committee by the appropriate governance officer of the Host Council;

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- (b) Subject to clause 2.7(c), notice of each meeting, copies of the agenda and any reports to be presented at the meeting, shall be given to all Pooling Partners by the Host Council no later than 7 clear days before the date of the meeting. The Pooling Partners shall ensure that a minimum of five clear days' notice of all meetings is given in accordance with their normal procedures for notification of Council meetings and all papers made available at all of the Pooling Partners head offices for inspection for those five days unless certified as confidential in which case agendas and any non-certified items are made available only.
 - (c) If a meeting is required to be held with less than 5 days' notice, the Chair must agree it is required urgently, approve the shortened notice period and allow as much notice as possible to be given. Notice should be given in the same manner, and the documents should be made available to all of the Pooling Partners for as many days as practicable before the meeting.

2.8 Exclusion of the public and press

- (a) Where any item to be discussed forms exempt information the Chair shall move that the public and press are excluded from the meeting for the duration of the discussion and voting on that item. Motions to exclude the press and public do not require to be seconded and shall be determined by simple majority vote of the Members present.
- (b) Where the press and public are excluded under (a) above the Chair may invite any person to remain in the meeting where they consider it to be necessary or appropriate to do so and any officers of the Pooling Partners present shall be presumed to be invited to remain unless the Chair specifies otherwise.
- (c) Any person may be excluded from a meeting or required to leave a meeting where in the opinion of the Chair they are causing a disturbance to the running of the meeting and have not desisted from doing following a request; or where any person is so disruptive that their conduct if allowed to remain would prevent the meeting from proceeding in a fair and acceptable manner.

2.9 The Joint Governance Committee may, through the Chair, invite any person to speak at a meeting.

2.10 Officers presenting reports to the Joint Governance Committee may be asked questions following such presentation.

2.11 Section 151 Officers and Monitoring Officers (and in their absence their deputies) of any Pooling Partner are entitled to attend all meetings including any part of any meeting which is closed to the public and press.

3 QUORUM

- 3.1 The quorum shall be five Members including at least one Member from each of the Pooling Partners.
- 3.2 Where a quorum is not present within 15 minutes of the start of the meeting and the Chair has not been notified that one or more Members have been delayed but will be attending, the meeting shall not be held and the Host Council will be ask to schedule and give notice of a replacement meeting.
- 3.3 Where, during any meeting there is no quorum present, then the meeting will adjourn immediately. If the Chair has been unable to ascertain within 15 minutes that the quorum can be restored the remaining business will be considered at another time and date fixed by the Chair.

4 CHAIR AND VICE CHAIR(S).

- 4.1 The Chair shall be a Member and shall be appointed by vote for a term of 12 calendar months.
- 4.2 Two Deputy Chairs shall be appointed by vote for a term of 12 calendar months. The Deputy Chairs shall be representatives of different Pooling Partners to each other and to that of the Chair.
- 4.3 In the absence of the Chair, either or both Deputy Chairs (by agreement) shall be entitled to exercise all of the functions of the Chair.
- 4.4 The decision of the Chair of the meeting on all points of procedure and order and the Chair's interpretation of any rule in this schedule shall be final and no debate may ensue thereon. The Chair shall be entitled to take the advice of a governance officer in interpreting any rule or objection on procedure.
- 4.5 The Chair may be assisted during meetings by a governance officer on procedural matters and such administrative officers as the Chair considers appropriate. Such governance and secretarial officers shall be entitled to remain in the meeting where the public and press are excluded.

5 AGENDA

- 5.1 An agenda shall be produced in advance for each meeting by the Host Council following consultation with the Chair.
- 5.2 The agenda for each meeting shall contain as the first substantive item the approval of the minutes of the previous meeting. The Chair will move that the minutes of the previous meeting be signed as a correct record. The only part of the previous minutes that can be discussed is their accuracy and any matters arising from those previous minutes shall be

regarded as new items on the agenda of the current meeting.

- 5.3 The Pooling Partners may ask the Chair to include any matter on the agenda which they consider should be discussed by the Joint Governance Committee.
- 5.4 The decision on whether to allow discussion on any other matter not on the agenda of a meeting at that meeting shall be made by the Chair.

6 MOTIONS

- 6.1 Any Member may propose a motion. All motions must be seconded. Motions which are opposed shall be put to a vote in accordance with the voting provisions of this schedule.
- 6.2 A Member may raise a point of order at any time. The Chair will hear them immediately. A point of order may only relate to an alleged breach of the provisions of this Schedule, or the law or other competent authority. The Member must indicate the provision or law or regulation and the way in which he/she considers it has been broken. The ruling of the Chair on the matter will be final. The Chair may take advice on the point of order from the appropriate officer.

7 VOTING

- 7.1 The Chair shall seek consensus wherever possible however where a vote is required the provisions of this section shall apply.
- 7.2 Each Member present will have one vote and voting will be by means of a show of hands. In the event of a tied vote, the Chair shall have a second or casting vote.
- 7.3 All decisions will be determined by simple majority.
- 7.4 In the event that a vote is taken, the voting positions and any abstentions of members will be recorded in the minutes.

8 SUB-COMMITTEES AND WORKING GROUPS

- 8.1 The Joint Governance Committee shall form such sub-committees and working groups as it considers expedient to performing its function. The Joint Governance Committee shall at the time of forming sub-committees or working groups set out the remit of the sub-committees or working groups, what the sub-committees or working groups are required to deliver and the timescale for that delivery.
- 8.2 Sub-committees and working groups shall be entitled to request the input and support of officers in the same manner as the Joint Governance Committee.
- 8.3 Each sub-committee and working group shall appoint a chair for that sub-committee or working group, who is to be one of the Members of the sub-committee or working group.

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- 8.4 Working groups may invite any person who is not a Member to join the group in order to assist in carrying out its function.
- 8.5 The Chairs of sub-committees and working groups shall report to Joint Governance Committee at each meeting of that committee on the process of the matters within their remit.
- 8.6 Sub-committees and working groups may be disbanded at any time on the vote of the Joint Governance Committee.
- 8.7 The provisions of paragraphs 5-7 (Agenda, Motions and Voting) of this Schedule shall apply to any sub-committee and working group meetings.

9 REMUNERATION

- 9.1 The Host Authority and/or Pooling Parties shall arrange for the appointment of an independent remuneration panel to advise them on appropriate levels of special responsibility allowances to be payable to their Members of the Joint Governance Committee in respect of duties and responsibilities undertaken as Members of the Joint Governance Committee. A commensurate allowance will be payable to all non-elected Members of the Joint Governance Committee in the interests of fairness and consistency.

Schedule 5

TUPE

1 DEFINITIONS

1.1 The following definitions shall apply in this Schedule:

Data Protection Legislation means the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Expected Transferring Employees means those Host Council Personnel who are reasonably expected by the Host Council to be a Transferring Employee.

Future Host Council means any relevant Pooling Partner who provides services which are identical or substantially similar to any of the Host Council Services (directly or indirectly) following the termination or expiry of this Agreement or the termination of the provision of any of the Host Council Services by the Host Council.

Host Council Personnel means the individuals employed or engaged by the Host Council or any other person in the provision of the Host Council Services under this Agreement from time to time.

Host Council Services means the services to be provided by the Host Council under this Agreement as more particularly described at clause 7.

Redundancy Costs means any notice pay (including payment in lieu of notice), holiday pay and statutory and/or contractual redundancy payments.

Sub-Contractor means any person to whom the provision of any of the Host Council Services may be sub-contracted by the Host Council.

Subsequent Transfer Date means the date on which responsibility for the provision of the Host Council Services, or any part of the Host Council Services, transfers from the Host Council to the Future Host Council.

Transferring Employee means an individual whose contract of employment has effect from and after the Subsequent Transfer Date, by virtue of the operation of TUPE, as if originally made between such person and the Future Host Council.

2 NO TRANSFER ON COMMENCEMENT

- 2.1 The Pooling Partners agree that the neither the commencement of this Agreement nor the implementation of any of the arrangements contemplated within it shall give rise to a "relevant transfer" within the meaning of TUPE on or around the Commencement Date.

3 EMPLOYEE INFORMATION ON TERMINATION

- 3.1 Subject to the Data Protection Legislation, during the period of twelve months preceding the expiry of this Agreement, or at any time after the Host Council has given notice to withdraw from the Pooling Collaboration or at any time after the Host Council has actually ceased to provide any of the Host Council Services:

- (a) the Host Council shall within 28 days of the reasonable request by any Future Host Council disclose to that Future Host Council details of the number, age and terms and conditions of employment, in relation to any Host Council Personnel assigned to the provision of the Host Council Services or any relevant part of the Host Council Services;
- (b) the Host Council shall not and, if relevant, shall procure that any Sub-Contractor shall not, save in the ordinary course of business, materially vary the terms and conditions of employment or engagement of any Host Council Personnel or redeploy, replace or dismiss any Host Council Personnel, or employ or engage any additional individual in the provision of the Host Council Services, without the prior written consent of the Future Host Council (such consent not to be unreasonably withheld or delayed).

4 EMOLUMENTS

All wages, salaries, bonus and commission payments, contributions to pension schemes, entitlement to holiday pay and any other emoluments (whether monetary or otherwise), tax and national insurance contributions relating to the Transferring Employees shall be paid or borne by the Host Council (or Sub-Contractor) in relation to the period before the Subsequent Transfer Date (and the Host Council shall procure such payment by any Sub-Contractor) and by the relevant Future Host Council thereafter (and the Pooling Partners shall procure such payment by any Future Host Council), and all necessary apportionments shall be made.

5 COMPLIANCE AND INDEMNITIES

- 5.1 The Host Council shall and/or, if relevant, shall procure that any Sub-Contractor shall:
- (a) comply with its or their obligations to inform and consult the Expected Transferring Employees pursuant to Regulation 13 of TUPE;

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- (b) use reasonable endeavours to agree with the Future Service Provider, and deliver to the Expected Transferring Employees prior to the Subsequent Transfer Date, a suitable joint statement regarding the proposed transfer of their employment to the Future Host Council on the Subsequent Transfer Date; and
- (c) give employees of the Future Host Council such access to the Expected Transferring Employees prior to the Subsequent Transfer Date as the Future Host Council may reasonably require for the purposes of consultation or of effecting an efficient transfer of the Host Council Services and Transferring Employees with effect from the Subsequent Transfer Date.
- 5.2 The Host Council shall indemnify and keep indemnified the Future Host Council against all and any costs, expenses, liabilities, damages and losses arising out of or in connection with any claim, demand, action or proceeding which is made or brought against the Future Host Council in relation to:
- (a) the employment or termination of employment of any Transferring Employee during the period before the Subsequent Transfer Date; or
- (b) the Host Council's failure or alleged failure to comply with its obligations under Regulation 13 of TUPE, save to the extent that any such failure or alleged failure is as a result of or in consequence of a failure by the Future Host Council to comply with its obligations under Regulation 13(4) of TUPE.
- 5.3 If a claim or allegation is made by any person who is not a Transferring Employee (a **"Non-Disclosed Transferring Employee"**) that his contract of employment has or should have effect as if originally made between himself and the Future Host Council by virtue of the operation or alleged operation of TUPE:
- (a) the Future Host Council shall notify the Host Council in writing as soon as reasonably practicable of any such claim or allegation and the Future Host Council shall then allow the Host Council (or any relevant Sub-Contractor) a period of 10 working days to consult with any such Non-Disclosed Transferring Employee concerning his claim or allegation;
- (b) the Future Host Council shall give to the Host Council (or any relevant Sub-Contractor) such co-operation or assistance as the Host Council (or relevant Sub-Contractor) may reasonably require;
- (c) if, following the period of 10 working days referred to in paragraph 4.3(a) above, any Non-Disclosed Transferring Employee continues to assert that his contract of employment has or should have effect as if originally made between himself and Future Host Council, the Future Host Council may, within a further period of 20 working days (or such other period as may be agreed in writing between the

Host Council and Future Host Council), serve notice to terminate the employment or alleged employment of such Non-Disclosed Transferring Employee with immediate effect; and

- (d) subject to the Future Host Council's compliance with this paragraph 5.3, the Host Council shall indemnify and keep indemnified the Future Host Council against all and any costs, expenses, liabilities, damages and losses arising out of or in connection with any claim, demand, action or proceeding which is made or brought by any such Non-Disclosed Transferring Employee in relation to any sums paid or payable to such Non-Disclosed Transferring Employee up to the date of the termination of such Non-Disclosed Transferring Employee's employment or alleged employment, and in relation to such termination.

5.4 The Future Host Council shall indemnify and keep indemnified the Host Council (for itself and any Sub-Contractor) against all and any costs, expenses, liabilities, damages and losses arising out of or in connection with any claim, demand, action or proceeding which is made or brought:

- (a) by any Transferring Employee in relation to any act or omission of the Future Host Council on or after the Subsequent Transfer Date and/or in relation to any events or circumstances relating to the employment or termination of employment of any Transferring Employee occurring or arising on or after the Subsequent Transfer Date;
- (b) in relation to any failure or alleged failure of the Future Host Council to comply with their obligations under Regulation 13 of TUPE; or
- (c) in relation to any substantial change made or proposed by the Future Host Council in the working conditions of any of the Transferring Employees, or any individual who would have been a Transferring Employee but whose employment terminated prior to the Subsequent Transfer Date, where that change is to the detriment of such Transferring Employee(s) or such individual(s).

6 REDUNDANCY COSTS

6.1 The Pooling Partners shall indemnify and keep indemnified on a joint and several basis the Host Council (for itself and any Sub-Contractor) against all and any Redundancy Costs arising out of or in connection with any claim, demand, action or proceeding which is made or brought against the Host Council (or Sub-Contractor) arising out of or in connection with the termination or alleged termination of employment of any Host Council Personnel by reason of redundancy within 6 months of the Subsequent Transfer Date, where the employment such Host Council Personnel does not transfer to a Future Host Council (under TUPE or otherwise) on the cessation of the provision of any or all of the

Host Council Services, provided that the Host Council shall, or shall procure that any Sub-Contractor shall, use reasonable endeavours to:

- (a) mitigate the amount of any such Redundancy Costs;
- (b) search for and, if available, offer alternative employment within the Host Council's or the Pooling Partners' (or, as the case may be, the Sub-Contractor's) organisation to any Host Council Personnel at risk of redundancy and shall give that Host Council Personnel a reasonable opportunity to accept any such offer of alternative employment before terminating that Host Council Personnel's employment; and
- (c) comply with any applicable statutory obligations.

DRAFT

[Execution clauses to be inserted]

[The Common Seal of Tameside Metropolitan Borough Council was hereunto affixed in the presence of Authorised Signatory]

[The Common Seal of the City of Bradford Metropolitan Council was hereunto affixed in the presence of Authorised Signatory]

[The Common Seal of Wirral Metropolitan Borough Council was hereunto affixed in the presence of Authorised Signatory]

DRAFT