

Dated _____ 2017

DRAFT

Inter-Authority Agreement between

Carmarthenshire County Council	(1)
City & County of Swansea Council	(2)
City of Cardiff Council	(3)
Flintshire County Council	(4)
Gwynedd Council	(5)
Powys County Council	(6)
Rhondda Cynon Taff County Borough Council	(7)
Torfaen County Borough Council	(8)

CONTENTS

Clause	Heading	Page
1	INTERPRETATION	2
2	COMMENCEMENT AND CESSATION OF THE MEMORANDUM OF UNDERSTANDING	5
3	FORMATION OF THE JOINT GOVERNANCE COMMITTEE	5
4	OFFICERS WORKING GROUP.....	6
5	DECISION MAKING	6
6	BUSINESS PLAN	7
7	HOST COUNCIL	8
8	OPERATOR CONTRACT	10
9	LIABILITIES AND INDEMNITIES FOR THE HOST COUNCIL.....	10
10	COMMITMENT OF THE CONSTITUENT AUTHORITIES AND CONTRIBUTIONS	10
11	ACCOUNTS	11
12	INVESTMENT MANAGEMENT COSTS	12
13	INTELLECTUAL PROPERTY	12
14	REPORTS	13
15	INSURANCE	13
16	DUTIES AND POWER	13
17	DELEGATION	14
18	OBLIGATIONS ON CONSTITUENT AUTHORITIES.....	14
19	INDEMNITY.....	15
20	POLICIES AND PROCEDURES.....	15
21	VOLUNTARY EXIT.....	15

22	COMPULSORY EXIT	16
23	FURTHER PROVISIONS RELATING TO A VE AUTHORITY OR A CE AUTHORITY .	18
24	NEW CONSTITUENT AUTHORITY	19
25	CONFIDENTIALITY.....	19
26	PENSIONS.....	20
27	FREEDOM OF INFORMATION	20
28	DATA PROTECTION	21
29	DISSOLUTION	22
30	ENTIRE AGREEMENT.....	22
31	NOTICES.....	22
32	CONTRACTS (THIRD PARTY RIGHTS)	23
33	SEVERANCE	23
34	AMENDMENTS.....	23
35	GOVERNING LAW AND JURISDICTION.....	23
36	ALTERNATIVE DISPUTE RESOLUTION.....	24
	SCHEDULE 1 - Contact Details	25
	SCHEDULE 2 - Matters Reserved to the Constituent Authorities	26
	SCHEDULE 3 - Joint Governance Committee Matters	27
	SCHEDULE 4 - Joint Governance Committee (JGC) - Terms of Reference	28
	SCHEDULE 5 - Policies and Procedures.....	30
	SCHEDULE 6 - Joint Governance Committee Procedure	31
	SCHEDULE 7 - TUPE	36
	SCHEDULE 8 - Officers Working Group Remit.....	41

THIS DEED is made on

2017

BY

- (1) **CARMARTHENSHIRE COUNTY COUNCIL** of [ADDRESS] ("**Carmarthenshire Council**")
- (2) **CITY & COUNTY OF SWANSEA COUNCIL** of [ADDRESS] ("**Swansea Council**").
- (3) **CITY OF CARDIFF COUNCIL** of [ADDRESS] ("**Cardiff Council**").
- (4) **FLINTSHIRE COUNTY COUNCIL** of [ADDRESS] ("**Flintshire Council**").
- (5) **GWYNEDD COUNCIL** of [ADDRESS] ("**Gwynedd Council**")
- (6) **POWYS COUNTY COUNCIL** of [ADDRESS] ("**Powys Council**")
- (7) **RHONDDA CYNON TAFF COUNTY BOROUGH COUNCIL** of [ADDRESS] ("**Rhondda Council**")
- (8) **TORFAEN COUNTY BOROUGH COUNCIL** of [ADDRESS] ("**Torfaen Council**")

(together referred to as the "**Constituent Authorities**" and individually as a "**Constituent Authority**")

BACKGROUND

- (A) The Constituent Authorities are committed to the development of a formal joint committee pursuant to section 101 and section 102 of the Local Government Act 1972 to ensure the effective operation of the arrangements for asset pooling within the LGPS under a framework of strong internal governance to achieve economies of scale and improved investment infrastructure.
- (B) The Constituent Authorities are all councils responsible for the administration of local government within their areas as set out in the Local Government Act 1972. The Department for Communities and Local Government in its letter dated 23 November 2016 has confirmed that the Constituent Authorities have been granted permission for each Constituent Authority to continue to collaborate with every other Constituent Authority to form a pool of assets in respect of each of their respective funds under the LGPS.
- (C) The Constituent Authorities shall carry on the Pooling Collaboration (as defined below) under the terms of this Agreement to oversee its governance.

AGREED TERMS

1 INTERPRETATION

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

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

Business Plan has the meaning given by clause 6.

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 the date upon which all Constituent Authorities have signed this Agreement.

Constituent Authorities 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 Constituent Authority appointed in accordance with clause 7 and whose duties are described within that clause.

Investment Pool means the pooled investments (whether held in single funds, multiple sub-funds or held in alternative structures outside of a collective investment vehicle) derived from assets held by the Constituent Authorities in their capacity as administering authorities within the LGPS for the purpose of the Pooling Collaboration described by this Agreement.

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 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 or their deputy appointed in accordance with clause 3.4.

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

Operator means the operator of the pooled investment vehicle being an Authorised Contractual Scheme (as defined by the Operator Contract) pursuant to the Operator Contract.

Operator Contract means the agreement between the Constituent Authorities and the Operator.

OWG means the Officers Working Group described in clause 4.

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.

Pooling Collaboration means the arrangements for asset pooling under the Investment Pool within a framework of strong internal governance to achieve economies of scale and improved investment in infrastructure carried on by the Constituent Authorities as described by this Agreement.

Pooling Contribution means as defined in clause 10.1.

PSPA 2013 means the Public Service Pensions Act 2013.

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

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

Submission means the document created by the Constituent Authorities entitled "*Submission by the Wales Pool to the Department for Communities and Local Government (DCLG) In response to the publication in November 2015: LGPS: Investment Reform Criteria and Guidance*" dated 15 July 2016.

Terms of Reference means the governing framework document concerning the functions and operations of the Joint Governance Committee.

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 initialled 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 Constituent Authorities 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 Constituent Authority as that Constituent Authority 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 Constituent Authority has executed it and each Constituent Authority 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 Constituent Authorities 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 21 or 22.

2.2 The Constituent Authorities confirm that the memorandum of understanding between them relating to *The procurement of services by the administering authorities of the local government pension scheme in Wales* shall cease to have effect from the Commencement Date.

3 FORMATION OF THE JOINT GOVERNANCE COMMITTEE

3.1 The Constituent Authorities 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 Investment 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 Constituent Authorities.

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 The membership of the Joint Governance Committee shall be one elected member nominated by each of the Constituent Authorities provided that the elected member is a member of that Constituent Authority's pensions committee (or equivalent body) for the purposes of the Local Government Pension Scheme Regulations 2013.

3.4 For the purposes of clause 3.3, each Constituent Authority may appoint a named deputy who must be an elected member of the same Constituent Authority's pension committee (or equivalent body) for the purposes of the Local Government Pension Scheme Regulations 2013 as the Member for whom they are acting as deputy .

3.5 The Joint Governance Committee shall undertake its role and act in accordance with the Terms of Reference set out in Schedule 4 and undertake the matters set out in Schedule

3 and shall seek and have regard to the advice of the OWG and any professional advisors appointed in carrying out its functions under this Agreement.

- 3.6 Every meeting shall be governed by the procedure and requirements set out in Schedule 6.
- 3.7 A programme of training will be provided to Members and their deputies having regard to CIPFA Guidance and the training provided to Members in their roles on their respective Constituent Authority pension committees. In order to be eligible to participate in the Joint Governance Committee Members must attend and complete this training within [6 months] of being appointed to the Joint Governance Committee and must thereafter attend update and refresher sessions provided at intervals deemed appropriate by the Joint Governance Committee. If Members do not attend mandatory training sessions, they may be required to undertake such training at the cost of the Constituent Authority the Member represents. Any failure to undertake necessary training shall be a matter for consideration of the relevant Member's Constituent Authority pension committee who shall determine if the Member has complied with that Constituent Authority's code of conduct and whether they should remain appointed to the Joint Governance Committee.

4 OFFICERS WORKING GROUP

- 4.1 The Joint Governance Committee shall appoint the OWG on the following terms:
- (a) **Purpose:** the OWG shall support and advise the Joint Governance Committee on such matters as the Joint Governance Committee may reasonably request or any matters relating to the Pooling Collaboration which are raised by any Constituent Authority's Section 151 Officer or Monitoring Officer;
 - (b) **Membership:** each Constituent Authority shall nominate up to [two] officers employed by that Constituent Authority as its representatives on the OWG;
 - (c) **Remit:** the remit of the OWG shall be as set out in Schedule 8;
- 4.2 The OWG shall undertake its role and have regard to the Joint Governance Committee terms of reference set out in Schedule 4
- 4.3 Each Constituent Authority's Section 151 Officer and Monitoring Officer shall, where they are not members of the OWG, have the right to attend meetings of the OWG and receive copies of any papers.

5 DECISION MAKING

- 5.1 The Constituent Authorities have identified the following two categories of decisions together with the means by which they will be taken:

- (a) **"Joint Governance Committee Matter"**: a matter 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 Constituent Authorities and such matters are identified in Schedule 3;
- (b) **"Matters Reserved to the Constituent Authorities"**: a matter which will have to be referred to each Constituent Authority for decision (having regard to any recommendation to be made thereon by the Joint Governance Committee) until the matter has been determined by all of the Constituent Authorities. If the Constituent Authorities fail to reach the same decision in respect of such matter then the matter shall be referred under clause 36 (Dispute Resolution) as a dispute for resolution, and such matters are identified in Schedule 2.

6 BUSINESS PLAN

6.1 The Joint Governance Committee shall, with the support of the OWG, produce a draft Business Plan to cover the medium term (being up to five years) having regard to the electoral cycle and the operational requirements of the Constituent Authorities for consultation with the Constituent Authorities. The draft Business Plan shall have regard to:

- (a) the strategic objectives of the Pooling Collaboration over the relevant plan period;
- (b) the financial budget for the relevant Business Plan period and/or any annual budget set;
- (c) the delivery plan produced by the Operator in connection with the Investment Pool including any costs or fees proposed by the Operator or any other supplier;
- (d) the requirements on each of the Constituent Authorities in their individual capacity as an administering authority pursuant to the Investment Regulations;
- (e) the requirements of each Constituent Authority's investment strategy;
- (f) the advice of appropriately qualified and authorised and regulated professional advisors;
- (g) the guidance issued from time to time by the Secretary of State as referred to in regulation 7(1) of the Investment Regulations;
- (h) such other matters that the Constituent Authorities may consider necessary to the furtherance of the Pooling Collaboration including (subject to clause 10.2), the proposal and development of ad hoc projects.

- 6.2 Consultation on the draft Business Plan shall be carried out by the OWG (with the Pension Boards, the Operator (where appropriate) and the Constituent Authorities and such other parties as it may deem necessary) who shall report on the outcome of that consultation. The Joint Governance Committee shall hold a meeting to discuss and, having had due regard to the consultation response report and the advice of the appropriately qualified and regulated professional advisors, agree a final Business Plan which may include such revisions to the draft as the Joint Governance Committee considers appropriate.
- 6.3 Following approval by the Joint Governance Committee the Business Plan shall be sent to all Constituent Authorities for their written approval.
- 6.4 The Business Plan will be reviewed by the Joint Governance Committee and the Constituent Authorities annually. Where any revisions are agreed by the Joint Governance Committee the revised Business Plan shall be sent to all Constituent Authorities for their written approval.
- 6.5 For the avoidance of doubt, final approval of the Business Plan shall be treated as a Matter Reserved to the Constituent Authorities (as defined in clause 5).

7 HOST COUNCIL

- 7.1 The Constituent Authorities have agreed, with effect from the Commencement Date, that *[insert name of Host Council]* will be the Host Council for the Pooling Collaboration which shall be carried out for and on behalf of itself and the Constituent Authorities and *[insert name of Host 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 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) provide appropriately qualified and experienced officers who will act as the primary legal and financial advisers to the Pooling Collaboration; **[Note: we would envisage that these functions are retained for management by the Joint Governance Committee, but please provide any views on this]**
 - (g) for the purposes of the Pooling Collaboration require their Section 151 Officer and Monitoring Officer (or their substitutes) 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 Constituent Authorities; **[For your consideration]**
 - (h) power to enter into contracts for supplies and services as required for the purposes of the Pooling Collaboration;
 - (i) liaise with the Operator on behalf of the Constituent Authorities in the manner and to the extent set out in the Contract Management, Co-ordination and Liaison with the Operator policy and procedure to be approved in accordance with Schedule 5 and to provide any contract management and co-ordination services for the purposes of the Pooling Collaboration set out in that policy and procedure.
- 7.2 [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 Constituent Authorities through this Agreement.]
- 7.3 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.
- 7.4 A replacement Host Council may be appointed by a majority decision of the Constituent Authorities provided that the [current Host Council and] the replacement Host Council agrees.
- 7.5 If the Host Council withdraws from the Pooling Collaboration pursuant to clause 21 (Voluntary Exit) or clause 22 (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.
- 7.6 Where TUPE applies in connection with the appointment of any replacement Host Council, then the Constituent Authorities shall comply with the provisions of Schedule 7.
- 7.7 For the duration of this Agreement, the Host Council shall act diligently and in good faith in all its dealings with the other Constituent Authorities.

- 7.8 For the duration of this Agreement, the Constituent Authorities 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.

8 OPERATOR CONTRACT

- 8.1 Each Constituent Authority shall promptly execute the Operator Contract in counterpart and return the executed counterpart to the Host Council as soon as reasonably practicable following execution. The Host Council shall as soon as reasonably practicable confirm that the Operator Contract has been duly executed by all Constituent Authorities and is in force and effect.
- 8.2 The Constituent Authorities authorise the Host Council to carry out its duties pursuant to clause 7.1(i).
- 8.3 For the avoidance of doubt, any allocation of liability arising under the Operator Contract shall be apportioned between the Constituent Authorities pursuant to the terms of the Operator Contract.

9 LIABILITIES AND INDEMNITIES FOR THE HOST COUNCIL

- 9.1 Nothing in this Agreement will make the Host Council liable in respect of anything done or omitted to be done by a Constituent Authority up to the Commencement Date.
- 9.2 .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 7 save in the case of its wilful default or fraud.

10 COMMITMENT OF THE CONSTITUENT AUTHORITIES AND CONTRIBUTIONS

- 10.1 Subject to clause 10.2, the Constituent Authorities agree to pay the contributions, which shall be calculated equally, of the estimated governance, procurement and administration costs included within the Business Plan (the "**Pooling Contributions**") except where the Business Plan provides otherwise.
- 10.2 The Constituent Authorities shall meet the costs of ad hoc projects to which they are a party equally between the Constituent Authorities who are parties only and any non-participating Constituent Authorities shall not be liable for any proportion of such costs.
- 10.3 The Constituent Authorities agree to pay the Pooling Contributions to the Host Council on such dates, and at such frequency, as is determined by the Business Plan. Any costs

incurred prior to the approval of the Business Plan shall be payable on being invoiced by the Host Council.

- 10.4 All Pooling Contributions shall be made by way of payment to the bank account notified to the Constituent Authorities 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.
- 10.5 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 Constituent Authorities in the proportions in which they were originally contributed.
- 10.6 Where any further contribution is required, or repayments are to be made, the Constituent Authorities shall decide the following:
- (a) the total amount;
 - (b) the apportionment of such contribution or repayment between the Constituent Authorities; 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 Constituent Authorities equally.

- 10.7 For the avoidance of doubt, any charges incurred in respect of investment management of the Investment Pool shall be attributed to each Constituent Authority by reference to the assets under management for that Constituent Authority and the investment management charges applicable to each sub-fund (or assets held in any alternative investment structure), are not determined by this Agreement. The liability of each Constituent Authority to meet the fees of the Operator shall be determined by the Operator Contract and not this Agreement.

11 ACCOUNTS

- 11.1 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 Constituent Authorities (who may also take copies). The Host Council shall make available on reasonable request such information as is required by any Constituent Authority to prepare their own accounts or respond to any internal or external audit.

- 11.2 The Host Council shall ensure that the contributions and payments made by each Constituent Authority shall be held in an account in the name of the Host Council which does not breach regulation 6 of the Investment Regulations.
- 11.3 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 Constituent Authorities.
- 11.4 The Host Council shall prepare annual accounts in relation to each Financial Year for the Pooling Collaboration in accordance with the Host Council's accounting policies (or such other accounting policy agreed by the Constituent Authorities) by no later than [31 May] in the following Financial Year.
- 11.5 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 Constituent Authorities and such repayment shall be in proportion to the total amount contributed by each.

12 INVESTMENT MANAGEMENT COSTS

- 12.1 In accordance with clause 10.8, each Constituent Authority 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.

13 INTELLECTUAL PROPERTY

- 13.1 Any intellectual property developed by any Constituent Authority for the purposes of the Pooling Collaboration shall be retained by the Constituent Authorities and each Constituent Authority will grant all of the other Constituent Authorities 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 Constituent Authority granting the licence remains a party to this Agreement. All costs and expenses relating to such intellectual property shall be borne by the Constituent Authorities and the other Constituent Authorities shall indemnify the Constituent Authority or Constituent Authorities in whom such property is vested against all liabilities that may arise directly or indirectly in respect of the use of it.

14 REPORTS

- 14.1 The Joint Governance Committee shall oversee the Pooling Collaboration and ensure that it is provided in accordance with the Business Plan.
- 14.2 To ensure that the Constituent Authorities are kept up-to-date with the performance of the Pooling Collaboration, the Joint Governance Committee shall report quarterly and annually to the Constituent Authorities with progress measured against the Business Plan and the objectives of the Investment Pool.

15 INSURANCE

- 15.1 Where the operation of the Pooling Collaboration is not covered by any existing insurance of the Constituent Authorities, the Host Council shall effect and at all times keep in force (for the benefit of the Members of the Joint Governance Committee and the officers appointed to the OWG) such policies of insurance for such amounts as it shall decide. Such policies shall be maintained at the expense of the Constituent Authorities and shall be an administration cost of this Pooling Collaboration for the purposes of of clause 10.1.

16 DUTIES AND POWER

Each Constituent Authority shall at all times:

- (a) use its reasonable skills and endeavours to promote and carry on the Pooling Collaboration for the benefit of the Constituent Authorities, and conduct itself in a proper and responsible manner;
- (b) devote such time and attention as the Constituent Authorities 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 Constituent Authorities as standards to be voluntarily applied to the Pooling Collaboration;
- (d) show the utmost good faith to the other Constituent Authorities 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 Constituent Authorities 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 Constituent Authorities, or itself, into disrepute;
- (h) obtain all necessary consents sufficient to carry on their duties to the Pooling Collaboration.

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

17 DELEGATION

17.1 Prior to the commencement of the Pooling Collaboration the Constituent Authorities 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 3 (Joint Governance Committee Matters) to the Joint Governance Committee and shall authorise their Member and that Member's deputy to exercise the Constituent Authority's vote;
- (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.

17.2 The Constituent Authorities 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.

17.3 The Joint Governance Committee shall procure that for any purpose for which it may be given power to appoint agents to carry out its duties, the Joint Governance Committee shall act in good faith and with reasonable skill and care in the selection, use and monitoring of such agents.

18 OBLIGATIONS ON CONSTITUENT AUTHORITIES

18.1 Without prejudice to the terms of this Agreement, the Constituent Authorities, on an individual basis, commit to the implementation of the Pooling Collaboration consistently with the Submission (subject to any variation agreed by the Constituent Authorities) and to use their reasonable endeavours to ensure the success of the Pooling Collaboration.

18.2 Nothing in this Agreement shall fetter the discretion of each Constituent Authority to formulate and revise an investment strategy appropriate for their fund within the LGPS pursuant to regulation 7 of the Investment Regulations.

19 INDEMNITY

- 19.1 Subject to clause 8.3, any Constituent Authority who is in material breach of any of the provisions of this Agreement shall indemnify the other Constituent Authorities 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 Constituent Authorities howsoever arising.

20 POLICIES AND PROCEDURES

- 20.1 The Joint Governance Committee shall prepare, maintain and adhere to the policies and procedures which are listed in Schedule 5 and any further 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. The Joint Governance Committee shall provide them to the Constituent Authorities and OWG and provide them to sub-delegates and other necessary parties with the aim of achieving uniformity and efficiency in operating practices.
- 20.2 Where any policy or procedure provided for under this Agreement requires the Constituent Authorities to address or copy any communication or similar to any contract management or co-ordination function the Joint Governance Committee will advise the Constituent Authorities of that requirement in writing. As of the date of receipt of an advisory under this clause the Constituent Authorities shall address or copy any communication as advised.

21 VOLUNTARY EXIT

- 21.1 Any Constituent Authority (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 Constituent Authorities may agree with the VE Authority that a different notice period applies (the "**Exit Date**").
- 21.2 A VE Authority may exit the Pooling Collaboration and be released from its obligations under this Agreement (other than clause 23) 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) subject to clause 21.5 below, it redeems all of its investments from the Investment Pool;
 - (d) its representatives on the Joint Governance Committee and the OWG resign on or before the Exit Date.
- 21.3 With effect from the [date of the notice given by the VE Authority pursuant to clause 21.1][Exit Date] the Member (and any nominated deputy for the purposes of clause 3.4) 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 Constituent Authority.
- 21.4 For the avoidance of doubt, the VE Authority shall remain liable to make the Pooling Contributions which are due prior to the Exit Date.
- 21.5 The Constituent Authorities recognise that there may be circumstances where the VE Authority may not be able to redeem all of its assets from the Investment Pool due to the nature of a particular investment (for example where an investment is illiquid or redeeming the asset would be in breach of contract) (the "**Retained Asset(s)**") provided that the Constituent Authorities and the VE Authority shall work together in good faith to redeem the Retained Asset(s) as soon as reasonably practicable. In such circumstances the VE Authority shall continue to make Pooling Contributions after the Exit Date until all of the Retained Asset(s) are redeemed from the Investment Pool. The Pooling Contributions shall be determined by the Business Plan which shall have regard to the relative value of the Retained Assets when compared to the assets applicable to the Constituent Authorities in the Investment Pool.

22 **COMPULSORY EXIT**

- 22.1 The Constituent Authorities (other than the CE Authority) may compulsorily require any Constituent Authority (the "**CE Authority**") to leave the Pooling Collaboration, by the Host Council giving the CE Authority written notice if the CE Authority:
- (a) commits any serious breach or persistent breaches of this Agreement;
 - (b) fails to pay any money owing by it to the Host Council within [14 (fourteen)] 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 Constituent Authorities within [14 (fourteen)] 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 Constituent Authorities, is likely to have a serious adverse effect on the Pooling Collaboration;

provided that in each case the CE Authority is first given [25 Business 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.

22.2 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 22.1 above provided that the other Constituent Authorities may notify the CE Authority that a different notice period applies (the "**Compulsory Exit Date**").

22.3 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) subject to the same circumstances in clause 21.5, it redeems all of its investments from the Investment Pool;
- (d) its representatives on the Joint Governance Committee and the OWG resign [on or before the Compulsory Exit Date].

22.4 With effect from the date of the notice given by the Host Council to the CE Authority pursuant to clause 22.1 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 Constituent Authority.

22.5 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 23.

22.6 The Constituent Authorities recognise that there may be circumstances where the CE Authority may not be able to redeem the Retained Asset(s) provided that the Constituent Authorities and the CE Authority shall work together in good faith to redeem the Retained

Asset(s) as soon as reasonably practicable. In such circumstances the CE Authority shall continue to make Pooling Contributions after the Compulsory Exit Date until all of the Retained Asset(s) are redeemed from the Investment Pool. The Pooling Contributions shall be determined by the Business Plan which shall have regard to the relative value of the Retained Asset(s) when compared to the assets applicable to the Constituent Authorities in the Investment Pool.

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

- 23.1 When any Constituent Authority ceases to be a Constituent Authority by virtue of being a VE Authority or a CE Authority, the continuing Constituent Authorities shall publish notice of the change in the Pooling Collaboration and shall give notice in writing of the change in the Pooling Collaboration to all third parties who have in the last 12 (twelve) months had any dealings with the Pooling Collaboration (as advised by the Host Council and whether as suppliers to the Host Council or as clients or customers of it).
- 23.2 The VE Authority or CE Authority (as applicable) irrevocably agree and undertake to execute and deliver within 5 working days of request all deeds and documents and to do all acts and things necessary to give effect to the terms of this Agreement and for vesting in the continuing Constituent Authorities the full benefit of the assets, rights and benefits to be transferred to the continuing Constituent Authorities under this Agreement.

Continuing liability

- 23.3 Where any Constituent Authority exits from this Agreement in accordance with Clause 21 or 22 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 Constituent Authority was a party to this Agreement.
- 23.4 Any Constituent Authority 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.

24 NEW CONSTITUENT AUTHORITY

- 24.1 The Constituent Authorities shall consider applications from other administering authorities of funds within the LGPS to join the Pooling Collaboration (a "**New Member Application**").
- 24.2 A New Member Application will be considered on the merits of its business case and the conditions which the Constituent Authorities consider appropriate from time to time.
- 24.3 A New Member Application will only be approved by the Constituent Authorities 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.

25 CONFIDENTIALITY

25.1 For the purposes of this Agreement, **Confidential Information** means, any information which has been certified as exempt information in accordance with Section 100I of the Local Government Act 1972 and all confidential information (however recorded or preserved) disclosed by a Constituent Authority or its representatives or advisers to another Constituent Authority 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 Constituent Authority and which are marked as being exempt information or confidential and which come into any Constituent Authority'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 Constituent Authority'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.

25.2 Save as provided otherwise in this agreement either expressly or by implication, each Constituent Authority undertakes that it shall not, at any time, disclose to any person any Confidential Information of the other Constituent Authorities and shall use its reasonable endeavours to keep all Confidential Information of the other Constituent Authorities confidential (whether it is marked as such or not) except as permitted by clause 25.3.

25.3 Each Constituent Authority may disclose the other Constituent Authority's Confidential Information:

- (a) to its representatives or advisers who need to know such information for the purposes of carrying out the Constituent Authority's obligations under or in connection with this Agreement. Each Constituent Authority shall ensure that its representatives or advisers to whom it discloses the other Constituent Authority'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.

26 PENSIONS

- 26.1 The Constituent Authorities are scheduled employers in the LGPS. The employees employed by the Host Council in the Pooling Collaboration will be active members of the LGPS from and including the Commencement Date or later date of commencement of employment subject to the Local Government Pension Scheme Regulations 2013.

27 FREEDOM OF INFORMATION

- 27.1 Each Constituent Authority acknowledges that the other Constituent Authorities and the Joint Governance Committee are subject to the requirements of the Freedom of Information Act 2000 ("**FoIA**") and each Constituent Authority shall where reasonable assist and co-operate with the other Constituent Authorities [(at their own expense)] to enable the other Constituent Authorities to comply with these information disclosure obligations.

- 27.2 Where a Constituent Authority receives a request for information under the FoIA in relation to information which it is holding on behalf of any of the other Constituent Authorities in relation to the Pooling Collaboration, it shall:

- (a) transfer the request for information to the other Constituent Authorities 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 Constituent Authorities with a copy of all information in its possession or power in the form that the Constituent Authorities reasonably require within 10 (ten) Business Days (or such longer period as the Constituent Authorities may specify) of the Constituent Authority requesting that information; and
- (c) provide all necessary assistance as reasonably requested by the other Constituent Authorities to enable the Constituent Authority to respond to a request for information within the time for compliance set out in the FoIA.

- 27.3 Where a Constituent Authority 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 Constituent Authorities may specify) of the Constituent Authority 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.
- 27.4 The Constituent Authorities 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.
- 27.5 Each Constituent Authority acknowledges that the other Constituent Authorities and the Joint Governance Committee may be obliged under the FoIA to disclose information:
- (a) without consulting with the other Constituent Authorities where it has not been practicable to achieve such consultation; or
 - (b) following consultation with the other Constituent Authorities and having taken their views into account.

28 DATA PROTECTION

- 28.1 The Constituent Authorities shall comply with the Data Protection Act 1998.

29 DISSOLUTION

- 29.1 No Constituent Authority shall be capable of dissolving the Pooling Collaboration unilaterally by means of a notice.
- 29.2 The Pooling Collaboration and this Agreement shall be terminated upon the unanimous agreement of all of the Constituent Authorities.
- 29.3 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 Constituent Authorities.

30 ENTIRE AGREEMENT

- 30.1 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.
- 30.2 Each Constituent Authority 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.
- 30.3 Each Constituent Authority agrees that it shall have no claim for innocent or negligent misrepresentation (or negligent misstatement) based on any statement in this agreement.
- 30.4 Nothing in this clause shall limit or exclude any liability for fraud.

31 NOTICES

- 31.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, post or facsimile addressed to the recipient as set out in Schedule 1 or any other address notified to the other party 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.
- 31.2 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.

32 CONTRACTS (THIRD PARTY RIGHTS)

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

33 SEVERANCE

- 33.1 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.
- 33.2 If one Constituent Authority gives notice to the other Constituent Authorities of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Constituent Authorities 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.

34 AMENDMENTS

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

35 GOVERNING LAW AND JURISDICTION

- 35.1 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 as it applies in Wales.
- 35.2 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.

36 ALTERNATIVE DISPUTE RESOLUTION

- 36.1 The Constituent Authorities agree:
- (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 Constituent Authorities;

- (b) that any dispute between the Constituent Authorities in relation to matters covered by this Agreement will be referred to in the first instance to the Chief Executives of the Constituent Authorities 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 [Welsh Local Government Association] or to a suitably qualified and independent person, as recommended by the Chief Executives and the Constituent Authorities 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 through the OWG and be instructed within [] days of referral to Chief Executives under sub-clause (b) following which the opinion should be delivered within a further [] days. that, if after exhausting other methods of dispute resolution, one of the Constituent Authorities 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 Constituent Authorities which are party to the dispute unless agreed otherwise by the Joint Governance Committee or ordered by the Courts.

[Please consider what happens where a dispute is not merely contractual but a s151 or monitoring officer considers an action to be ultra vires or maladministration. Do you have a view on this aspect?]

[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

Contact Details

Carmarthenshire County Council
[Contact Name and Details]

City & County of Swansea Council
[Contact Name and Details]

City of Cardiff Council
[Contact Name and Details]

Flintshire County Council
[Contact Name and Details]

Gwynedd Council
[Contact Name and Details]

Powys County Council
[Contact Name and Details]

Rhondda Cynon Taff County Borough
[Contact Name and Details]

Torfaen County Borough Council
[Contact Name and Details]

Schedule 2

Matters Reserved to the Constituent Authorities

- 1 Appointment, termination or replacement of the Operator following the making of a recommendation by the Joint Governance Committee.
- 2 Approval of additional expenditure not included within the Business Plan which exceeds [30] % of the approved budget in the Business Plan in any one Financial Year.
- 3 Formulation, approval or revisions of each respective Constituent Authority's investment strategy for the purposes of regulation 7 of the Investment Regulations.
- 4 Admitting a new administering authority within the LGPS to the Investment Pool as a Constituent Authority.
- 5 Amendment of this Agreement.
- 6 Termination of this Agreement.
- 7 Material change to the nature of the Operator Contract.
8. Approval of the initial strategic objectives to allow preparation of the first Business Plan (which objectives shall reflect the objectives set out in the procurement of the Operator).
- 9 Approval of any evaluation or scoring criteria for any procurement of a replacement Operator.
- 10 Approval of Business Plan which shall include approval of the ongoing strategic objectives of the Investment Pool.
11. 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 and the funds or sub-funds operated by the Operator.

Schedule 3

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 Constituent Authorities which shall include (without prejudice to the generality of the foregoing):

- 1 Making a recommendation on the appointment, replacement or termination of the Operator to the Constituent Authorities.
- 2 Appointing and replacing service providers, advisers to the Joint Governance Committee(other than the Operator).
- 3 Approving the creation of new pooled vehicles for the Operator.
- 4 Approving the creation of new sub-funds provided by the Operator.
- 5 Approving the termination of sub-funds provided by the Operator.
- 6 Preparing a plan relating to the overall transition of assets in accordance with each Constituent Authority's asset transition plan.
- 7 Approving changes to the Operator Contract which are not material changes to the nature of the Operator Contract.
- 8 Dealing with the necessary general ongoing management of the Pooling Collaboration.
- 9 Delegation of tasks to the OWG, including the preparation of reports and draft documents and the undertaking of consultations.
- 10 Liaison with Pension Boards as appropriate in line with CIPFA Guidance, guidance issued by the Pensions Regulator and other applicable legislation or regulatory guidance.
11. Determining the best means of alternative investment structures for assets where a sub-fund is not being provided by the Operator.

Notwithstanding the above, for the avoidance of doubt, the Joint Governance Committee may not delegate its responsibilities.

Schedule 4

Joint Governance Committee - Terms of Reference

The Joint Governance Committee responsibilities are:

- Making recommendations to the Constituent Authorities on the termination of the Operator Contract before the conclusion of the fixed term contract, where the performance of the Operator is considered unacceptable;
- Ensuring that there are an appropriate range of sub-funds available in order to allow the Constituent Authorities to meet their strategic investment aims. Following representation from any, some or all of the Constituent Authorities, the Joint Governance Committee may direct the Operator to set up a sub-fund in a particular asset class. The Joint Governance Committee must be mindful at all times of the need to balance the requirement to provide a particular sub-fund with the benefits of holding aggregated assets;
- Monitoring the performance of the Operator against the agreed set of key performance indicators;
- Reporting on the performance of the Investment Pool, its costs and other activities, but not limited to, the Constituent Authorities, government, the Scheme Advisory Board and the general public;
- From time to time, to review the appropriateness of the existing structures, including the number and make-up of sub-funds and to make recommendations to the Constituent Authorities as to the respective merits of procuring Operator services by means of a third party or through ownership by the Constituent Authorities of the Operator;
- Liaising with the Operator, in such areas as the Operator seeks the preferences and views of the Joint Governance Committee, on the appointment of suppliers, for example manager preferences or the appointment of depositories;
- Liaising with the Constituent Authorities on the appropriate range of sub-funds to be provided in the Investment Pool;
- From time to time reviewing policies in respect of ethical, social and governance matters and voting rights and where appropriate make recommendations to the Constituent Authorities as to any changes deemed necessary;
- Applying any processes or policies that are assigned to it within this Agreement;

- Recommend a high level plan for initial transition of assets to the pool and further asset transitions in the event, for example, of new sub-funds being created or manager changes within sub-funds;
- Ensuring that the OWG acts within its remit as set out in clause 4 and Schedule 8 of this Agreement;
- Recommending the approval or otherwise of accounts to the Constituent Authorities; Monitoring the implementation and effectiveness of the policies listed in Schedule [5] and initiating reviews of these where required;
- Delivery and ongoing monitoring against the Pooling Collaboration objectives, Business Plan and budgets;
- Approving responses from the Pooling Collaboration in relation to consultations or other matters considered appropriate;
- Seeking advice from professional and authorised and regulated advisers where necessary;
- Agreeing the Business Plan to be put forward to the Constituent Authorities for approval;
- Report to the Constituent Authorities 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 Operator, the structure of the funds and the ongoing monitoring of the Business Plan;
- Agreeing criteria for the evaluation of bids or tenders for any procurement (other than the first appointment of the Operator) to be put forward for the approval of the Constituent Authorities.

Schedule 5

Policies and Procedures

- Training and Competence
- Complaints
- Breaches and Errors
- Conflicts of Interests
- Business Continuity Planning
- DSAR/FOI
- Contract Management, Co-ordination and Liaison with the Operator

Schedule 6

Joint Governance Committee Procedure

1 MEMBERSHIP

- 1.1 The membership of the Joint Governance Committee shall consist of one elected member or their deputy per Constituent Authority.
- 1.2 No substitutes other than deputies shall be allowed.
- 1.3 The Joint Governance Committee shall not include any non-voting or co-opted members.

2 MEETINGS

- 2.1 Meeting shall be held a minimum of four times per Financial year. The anticipated schedule of meetings and the locations in which they will be held will be agreed in advance of the commencement of the next Financial Year no later than the final meeting of the current Financial Year.
- 2.2 A meeting may be held at such time and place as the Chair of the Joint Governance Committee thinks fit provided that at least two meetings per annum shall be held in rotating locations between the Constituent Authorities to facilitate public access. The Constituent Authorities shall make available suitable accommodation for the holding of such meetings in public including the provision of Welsh Language translation, video-conferencing and webcasting services as appropriate.
- 2.3 All agendas, reports and minutes in relation to the Joint Committee shall be in both Welsh and English, and simultaneous translation of proceedings will be available throughout all meetings of the Joint Committee.
- 2.4 The Joint Governance Committee may decide to allow remote participation in meetings via video-conference or any similar medium. Any Member attending by video-conference shall be held to be in attendance at the meeting for the purposes of this Schedule.
- 2.5 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.
- 2.6 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.

2.7 Minutes will be kept of all meetings. The Chair will sign the minutes of the proceedings at the next suitable meeting.

2.8 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;
- (b) Notice of each meeting, copies of the agenda and any reports to be presented at the meeting, shall be given to all Constituent Authorities by the Host Council no later than [14] clear days before the date of the meeting. The Constituent Authorities 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 Constituent Authorities 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 Constituent Authorities for as many days as practicable before the meeting.

2.9 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 members of the OWG 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.

- 2.10 The Joint Governance Committee may, through the Chair, invite any person to speak at a meeting.
- 2.11 Officers of the OWG presenting reports to the Joint Governance Committee may be asked questions following such presentation.
- 2.12 Section 151 officers and Monitoring Officers of any Constituent Authority 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.
- 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.

- 4.1 The Chair and Vice-Chair shall be Members and shall be appointed by vote for a term of 12 calendar months.
- 4.2 In the absence of the Chair, the Vice-chair shall be entitled to exercise all of the functions of the Chair.
- 4.3 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.
- 4.4 The Chair may be assisted during meetings by 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 minutes that can be discussed is their accuracy.
- 5.3 The OWG and the Constituent Authorities 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 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 the OWG 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.
- 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.

Schedule 7

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 Constituent Authority 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 Constituent Authorities 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 Constituent Authorities 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;

- (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 Constituent Authorities 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 Constituent Authorities' (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.

Schedule 8 - Officers Working Group Remit

The remit of the OWG shall include:

- (a) proposing to the Joint Governance Committee and procuring external support requirements (including legal, governance, tax and other financial support) relevant to the Pooling Collaboration;
- (b) proposals to the Joint Governance Committee on governance arrangements including how the Operator should be held to account by reference to the Operator Contract;
- (c) proposals to the Joint Governance Committee on the most appropriate means of accessing different asset types, the structure of the Investment Pool including the number and make-up of sub-funds and where appropriate use of any external or national investment vehicles;
- (d) proposing high level transition plans for the transfer of assets to pool;
- (e) challenging and contributing to the development of the Pooling Collaboration to enable the Pooling Collaboration and the Joint Governance Committee to achieve its objectives;
- (f) making recommendations to the Joint Governance Committee on the appointment, replacement or termination of the Operator including recommendations on whether to use a third party supplier or an owned entity;
- (g) monitoring and reviewing the performance of the Operator in meeting its objectives, service levels and key performance indicators and reporting to the Joint Governance Committee within the quarterly reports and on other occasions as required;
- (h) receiving reports on performance of the assets and reporting to the Joint Governance Committee;
- (i) external reporting on the pool and its performance no less than quarterly;
- (j) liaison with other pools as required;
- (k) consider and make recommendations to the Joint Governance Committee in relation to the Business Plan, prepare a draft Business Plan for consideration by the Joint Governance Committee, consulting upon the approved draft and reporting on the outcomes of such consultation including proposing any revisions to the draft to the Joint Governance Committee;

- (l) develop and keep under review the programme of training to be delivered to Members ensuring that it complies with all relevant regulations and applicable guidance, which programme of training shall have regard to the training undertaken in Members' roles on their respective Constituent Authority pension committees and shall seek to avoid duplication of training;
- (m) seek advice from professional advisors that are authorised and regulated by competent authorities;
- (n) managing the procurement process for the procurement of any replacement Operator including proposing criteria for the evaluation of bids or tenders
- (o) such other matters as the Joint Governance Committee shall request or delegate to the OWG.

[Execution clauses to be inserted]