

**DATED** \_\_\_\_\_ **2017**

**Cabinet Report Version  
23.06.2017**

**(1) [INVLP]**

**(2) Lendlease Real Estate Investment Services Limited**

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**ASSET MANAGEMENT AGREEMENT**  
**relating to services to be provided to INVLP**

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**Pinsent Masons**

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THIS AGREEMENT is made on

2017

**BETWEEN:-**

- (1) **[INVLP]** a limited liability partnership registered in England and Wales (Number **[ ]**) whose registered office is at **[ ]** ("**InvLP**"); and
- (2) **Lendlease Real Estate Investment Services Limited** a company registered in England and Wales (Company Number 02504487) whose registered office is at 20 Triton Street, Regent's Place, London NW1 3BF (the "**Asset Manager**").

**RECITALS:-**

- (A) The HDV has been established as a joint venture partnership between The Mayor and Burgesses of the London Borough of Haringey (the "**Council**") and [PSP] to carry out regeneration and development activities in the Borough.
- (B) InvLP is a wholly owned subsidiary of HDV established with the Objectives, which has been set up to inter alia take responsibility for the Investment Portfolio.
- (B) InvLP wishes to appoint the Asset Manager to provide the Services on the terms and conditions set out in this Agreement in return for the payment of the Fee (subject to and in accordance with the terms of this Agreement).

**IT IS AGREED** as follows:-

1. **DEFINITIONS AND INTERPRETATION**

This Agreement shall be interpreted according to the provisions of Schedule 1.

2. **APPOINTMENT OF THE ASSET MANAGER**

- 2.1 InvLP appoints the Asset Manager on an exclusive basis as the asset manager for the Investment Portfolio Properties through the provision of the Services to InvLP upon the terms and conditions set out in this Agreement and the Asset Manager hereby accepts its appointment and agrees to provide the Services to InvLP throughout the term of this Agreement in accordance with the terms and conditions set out in this Agreement.
- 2.2 The Asset Manager shall be an independent contractor with respect to the provision of the Services to InvLP. Neither the Asset Manager nor its employees shall be deemed to be the servants, agents or employees of InvLP (save as expressly set out in this Agreement).
- 2.3 The Asset Manager shall neither act nor hold itself out as having authority to act on behalf of InvLP in any manner which is beyond the scope of this Agreement unless otherwise instructed to do so by InvLP.
- 2.4 Subject to the Asset Manager's obligations under this Agreement, nothing in this Agreement shall prevent the Asset Manager from providing any services whatsoever to any other person(s).
- 2.5 The General Manager shall be responsible for co-ordinating the Asset Manager in relation to the provision of the Services to InvLP upon the terms and conditions set out in this Agreement and in the event that the General Manager is replaced for any reason the Asset Manager shall provide written notification to InvLP to inform it of any such replacement.
- 2.6 A list of the Asset Manager's key personnel will be notified by the Asset Manager to InvLP within 3 months of the date of this Agreement and incorporated as Schedule 5 (the "**Key Personnel**"). The Asset Manager shall, so far as it is within its reasonable control and so long as the relevant Key Personnel remain fit, healthy, able and an employee of the Asset Manager, procure that the Key Personnel devote sufficient business time to the provision of the Services and retain their

involvement in the performance of both the Services and the Asset Manager's obligations under this Agreement and in particular shall not, from the Commencement Date until the date of termination or expiry of this Agreement, replace the Key Personnel without the prior written consent of InvLP (such consent not to be unreasonably withheld or delayed).

2.7 The Asset Manager will notify InvLP of the identity of the General Manager within three months of the date of this Agreement or such longer period as shall be agreed between the parties.

## 2.8 **Scope**

2.8.1 The Asset Manager shall not be required to provide any services not contemplated by the intended scope of its obligations in this Agreement.

2.8.2 If InvLP requires any additional services to be carried out in respect of the Investment Portfolio Properties or the Asset Manager recommends a variation in the Services, it can opt to approach the other party and request that the Asset Manager provide or procure such additional services.

2.8.3 If the option in Clause 2.8.2 is exercised and the Asset Manager is willing and able to provide or procure the additional services, InvLP and the Asset Manager will use reasonable endeavours to agree the terms and level of remuneration that would apply to the provision of such additional services.

## 3. **OBLIGATIONS AND DUTIES OF THE ASSET MANAGER**

### **General**

3.1 The Asset Manager acknowledges that it is and shall be deemed to be fully aware of the terms of the Members' Agreement and the Business Plans and shall at all times:-

3.1.1 use all reasonable skill and care and take such actions as are to be expected of a properly qualified, experienced and competent property asset manager so as to work to implement the requirements of the Business Plans; and

3.1.2 act within the parameters of and in a manner consistent with the Business Plans, insofar as the Business Plans and Members' Agreement relate to the Services.

3.2 In the performance of the Services, the Asset Manager shall:-

3.2.1 devote such time and attention as may be necessary for the proper performance of the Services and shall perform its obligations under this Agreement in accordance with Good Industry Practice and so as to give to InvLP the full and complete benefit of the Asset Manager's experience and expertise in relation to the management of the Investment Portfolio Properties;

3.2.2 act in good faith towards InvLP with due regard to the provisions of the Members' Agreement and the Business Plans and shall, subject to Clause 6, comply with the reasonable, proper and lawful instructions of and use all reasonable skill and care to implement the reasonable, proper and lawful decisions of InvLP in relation to the management of the Investment Portfolio Properties and the provision of the Services in so far as any such instructions or decisions would not otherwise place the Asset Manager in breach of its authority set out in the Delegation Policy or any other obligation under this Agreement and/or any other agreements it has entered into with InvLP;

3.2.3 notwithstanding any other provision of this Agreement (and unless prior written consent has been obtained from InvLP to extend its authority) ensure that the Asset Manager acts in accordance with its permitted authorities and within all reasonable and proper instructions of InvLP;

- 3.2.4 not cause InvLP to be in breach of any law, or of any regulation or condition imposed by any statutory undertaker;
- 3.2.5 comply with the Procurement Policy;
- 3.2.6 set up and maintain (and procure that any persons to whom it sub-contracts any of the Services pursuant to and in accordance with Clause 4 set up and maintain) personnel procedures covering all relevant matters (including discipline, grievance, equal opportunities (including without limitation diversity and disability equality policies) and health and safety matters), ensuring that the terms and implementation of such procedures comply with all Statutory Requirements, Guidance and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to InvLP;
- 3.2.7 give such general advice and assistance to InvLP in connection with the Investment Portfolio Properties as may lie within the field of the Asset Manager's qualifications, competence and experience and as InvLP may from time to time reasonably request save where such advice and assistance are outside the scope of the Services;
- 3.2.8 at all times exercise its discretion and business judgment fairly and properly;
- 3.2.9 subject to the provisions of the Asset Management Agreement Guarantee, take such action as would be undertaken by a prudent and reasonable owner of the Investment Portfolio Properties with the objective of maximising returns in terms of rental yield and capital growth of the Investment Portfolio Properties without exposing InvLP to undue speculative risk provided that such actions are in accordance with the Investment Business Plan and are expressly authorised in accordance with the Delegation Policy and/or this Agreement;
- 3.2.10 have regard to the principles of good estate management and professional codes of conduct and/or guidelines laid down from time to time by the Royal Institution of Chartered Surveyors (or its successor body from time to time);
- 3.2.11 not make any undisclosed profit or commission out of its duties;
- 3.2.12 not and shall use reasonable endeavours to procure that any sub-contractor appointed pursuant to Clause 4 shall not knowingly do or knowingly omit to do anything in connection with the provision of the Services or in the course of its or their activities, which in the reasonable opinion of InvLP brings the standing of InvLP and/or any of the HDV Parties and/or the Council into serious disrepute or attracts material adverse publicity to InvLP and/or any of the HDV Parties and/or the Council save that this Clause 3.2.12 shall not apply where the Asset Manager or any relevant third party asserts a claim against InvLP or any of the HDV Parties and/or the Council provided that such claim is not frivolous or vexatious; and
- 3.2.13 comply with the obligations on its part that are set out in the Asset Management Agreement Guarantee.

### **Service Delivery**

- 3.3 In the performance of the Services, the Asset Manager shall:-
  - 3.3.1 in respect of each Investment Portfolio Property use all reasonable endeavours in respect of each Key Performance Indicator to procure that such Key Performance Indicator is achieved by the relevant KPI Target Achievement Threshold;
  - 3.3.2 co-operate in good faith with the Property Manager and any relevant consultants or professionals appointed by the Council, InvLP and/or any other HDV Party;
  - 3.3.3 where InvLP provides funds to the Asset Manager to enable the Asset Manager to fulfil its duties and obligations under this Agreement, to use such funds in a prudent manner, having due regard to the nature of the Services, the requirement to provide the Services as

a whole and the Objectives (and the Asset Manager shall only use such funds for the purposes of carrying out the Services);

- 3.3.4 perform the Services in such manner and at such time so that no act, omission or default of the Asset Manager in relation to the performance of the Services shall knowingly cause InvLP, any HDV Party and/or the Council to be in breach of any law or of any regulation or condition imposed by any local or municipal authority or statutory undertakers or other authority having jurisdiction or authority;
- 3.3.5 procure, at all times during the continuance of this Agreement, that the Asset Manager shall employ and/or engage a sufficient number of suitably skilled and qualified persons to provide the Services and to enable the Asset Manager to comply with the terms of this Agreement; and
- 3.3.6 use reasonable endeavours to comply with such timescales as may be agreed with InvLP in relation to the provision of the Services from time to time.

#### **Reporting and Progress Monitoring**

3.4 In the performance of the Services, the Asset Manager shall:-

- 3.4.1 keep InvLP regularly informed of progress of all Services in which the Asset Manager is engaged under this Agreement and shall provide all such information in its possession or control in relation to the Services as InvLP shall reasonably request from time to time;
- 3.4.2 promptly make full and timely disclosure to InvLP upon becoming aware of any:
  - (a) matter which adversely affects any of the Investment Portfolio Properties, any HDV Party and/or a Member or adversely affects InvLP's liability in respect of any of the Investment Portfolio Properties;
  - (b) matter which arises (or is likely to arise) and which would have a material adverse effect on the ability of the Asset Manager to perform the Services in accordance with this Agreement;
  - (c) of the insolvency events specified in Clause 11.2 arising in relation to the Asset Manager; and/or
  - (d) conflict of interest which may arise with the Asset Manager or any of the Asset Manager's directors in the performance of their duties and obligations under this Agreement;
- 3.4.3 allow InvLP (and its employees, agents and advisers), on reasonable prior notice, access to inspect and/or take copies of any such documents or records as may be reasonably necessary or appropriate for the purpose of or in connection with the Services and/or the Business and for the purpose of monitoring the Asset Manager's performance of the Services in accordance with this Agreement;
- 3.4.4 when reasonably required by InvLP (giving details of time, location and agenda) and having received reasonable prior notice in writing, attend meetings by person, telephone or video conference (as specified) to report on or support its actions and to answer either at, or as soon as is reasonably practicable after, all enquiries made at such meetings; and
- 3.4.5 within 30 days of the end of each Quarter which follows the Start Date, provide InvLP with a report detailing the Asset Manager's performance and delivery of the Services during the immediately preceding Quarter (the "**Relevant Quarter**") against the Key Performance Indicators and otherwise in accordance with the terms of this Agreement (the "**Quarterly Performance Report**"). For the avoidance of doubt the first Quarterly Performance Report shall relate to the period from and including the Start Date and expiring on the last Business Day of the Quarter in which the Start Date occurred (and the Quarterly Performance Report shall become due on the first Business Day thereafter).

#### 4. **ASSIGNMENT AND APPOINTMENT OF ADVISERS AND AGENTS**

##### **Sub-contracting by the Asset Manager**

- 4.1 The Asset Manager shall not sub-contract, assign, novate, delegate or otherwise transfer any benefit or obligation, or the performance of any of its rights, obligations or duties under this Agreement other than in accordance with the provisions of this Clause 4.
- 4.2 The Asset Manager may sub-contract the Services (or part thereof) provided always that the Asset Manager:-
- 4.2.1 has received the prior written consent of InvLP (such consent not to be unreasonably withheld or delayed);
  - 4.2.2 shall select sub-contractors which are appropriately qualified to undertake the task for which they have been appointed;
  - 4.2.3 exercises reasonable supervision of the performance of its sub-contractors;
  - 4.2.4 places obligations and liabilities on each sub-contractor (where appropriate) which are no less onerous than the obligations and liabilities placed on the Asset Manager under this Agreement in respect of the Services which are the subject of the sub-contract taking into account the nature of the services required under that arrangement (including but not limited to the data protection obligations contained in Clause 19);
  - 4.2.5 shall be responsible for all acts and omissions of its sub-contractors (including without limitation any sub-sub-contractors) as though they were its own;
  - 4.2.6 ensures (on appointment of any sub-contractors and on each subsequent anniversary of each appointment thereafter) that such sub-contractors have adequate insurance commensurate to their role with an insurer of repute (including, but not limited to (where relevant to the services being provided by the sub-contractor) professional indemnity insurance) and upon request delivers evidence of the same to InvLP; and
  - 4.2.7 shall be responsible for the costs and fees of such sub-contract (including all costs incurred by the Asset Manager as a result of any sub-contract).
- 4.3 Subject to Clauses 4.2.2 to 4.2.7, the Asset Manager may only sub-contract the Key Services with the prior written consent of InvLP and InvLP shall be deemed to be acting reasonably in withholding consent to the sub-contracting of any Key Services at its absolute discretion;
- 4.4 The Asset Manager shall ensure that all sub-contracts entered into pursuant to Clause 4.2 and/or Clause 4.3 shall include an express acknowledgement of a duty of care from the relevant sub-contractor to InvLP.
- 4.5 For the avoidance of doubt, no sub-contract entered into pursuant to Clause 4.2 and/or Clause 4.3 shall in any way release the Asset Manager from any of its obligations under this Agreement.

##### **Appointments by the Asset Manager on behalf of InvLP**

- 4.6 Subject always to:
- 4.6.1 the Procurement Policy; and
  - 4.6.2 the prior written consent and approval of InvLP as to methodology of procurement (which must itself be in compliance with the Procurement Policy) and the costs and terms of appointment,

the Asset Manager shall be entitled to appoint consultants, advisors and contractors to provide works or services to InvLP as required on behalf of InvLP ("**Appointment**") provided always that

such Appointment complies with the provisions of Clause 4.7 and Clause 4.8. Any such consultant, advisor or contractor is referred to as an "**Appointee**".

4.7 All Appointments made in accordance with Clause 4.6 shall comply with the Procurement Policy and the terms of any delegation made by InvLP to the Asset Manager and, unless otherwise agreed by InvLP and the Asset Manager, shall be entered into in the name of InvLP and the Asset Manager shall describe itself in all Appointments as "agent" of InvLP. The Asset Manager shall make full and complete disclosure of any interest (pecuniary and non-pecuniary) which the Asset Manager or its officers or employees may have in the contracting entity that is the subject of such Appointment and notify InvLP of the name and identity of the Appointee, including any Appointee that may be a company within the Asset Manager's Group.

4.8 The Asset Manager shall:-

4.8.1 procure that (unless otherwise agreed by InvLP), as part of the terms of the Appointment, each Appointee is required to comply with obligations no less onerous than those placed on the Asset Manager under this Agreement (to the extent applicable and proportionate to the works and/or services being carried out by the Appointee); and

4.8.2 use all reasonable endeavours to fully enforce the terms of each Appointment on behalf of InvLP provided that the Asset Manager shall not be liable for any act, omission or default of any Appointee save to the extent caused by a breach of this Agreement by the Asset Manager.

## 5. **ASSIGNMENT BY THE ASSET MANAGER**

The Asset Manager may (with prior written approval of InvLP) assign the whole of its interest under this Agreement at any time to any subsidiary or holding company of the Asset Manager (provided that such assignee has the appropriate experience, staff and resources to comply with the Asset Manager's obligations under this Agreement).

## 6. **OBLIGATIONS OF INVLP**

6.1 Subject always to Clause 7 InvLP shall:-

6.1.1 supply or arrange for others to supply to the Asset Manager, without charge, and in such reasonable time so as not to prevent, delay or disrupt the performance of the Services, all data, information and records relating to the Investment Portfolio Properties (or part thereof) (or copies thereof) which are:-

(a) in its possession or under its control; and

(b) which are reasonably requested from time to time by the Asset Manager;

6.1.2 where such property or properties are within the control of InvLP, ensure that the Asset Manager has access to the Investment Portfolio Properties (or any relevant part of them) as may be necessary for the proper performance of its duties under this Agreement. [In relation to Investment Portfolio Properties not yet transferred pursuant to the Development Framework Agreement or that are otherwise in the possession or control of the Council, InvLP shall use reasonable endeavours to procure that the Council shall ensure that the Asset Manager has access to such Investment Portfolio Properties (or any relevant part of them) as may be necessary for the proper performance of its duties under this Agreement;]

6.1.3 where InvLP requires the Asset Manager to comply with any proper and lawful instruction or direction where the cost of complying with such instruction or direction shall incur an additional cost and the subject matter of such instruction or direction is not set out in the scope of the services to be provided by the Asset Manager in Schedule 2, ensure that the Asset Manager has the funds it reasonably requires to comply with such instruction or direction;

6.1.4 provide the Asset Manager with additional funds in accordance with Clause 3.3.3; and

6.1.5 pay the Fee to the Asset Manager subject to and in accordance with the provisions of Clause 8, Schedule 4 Part 3 and Schedule 7.

## 7. **LIMITATIONS**

7.1 Notwithstanding any other provision of this Agreement, the Asset Manager shall not, when carrying out and performing its obligations and duties under this Agreement, expend on behalf of InvLP or commit InvLP to expend in any way whatsoever, any sum of money to any third party save:-

7.1.1 where and to the extent that such expenditure has been approved in writing by InvLP or is included in a written instruction or direction issued by InvLP;

7.1.2 where and to the extent that such expenditure is contained in the Approved Budget set out in the Investment Business Plan; or

7.1.3 where and to the extent that such expenditure is incurred in accordance with the authorisations set out in the Delegation Policy.

7.2 For the avoidance of doubt, the Asset Manager shall be entitled to take such actions as are set out under the "Asset Manager" heading in the Delegation Policy without the further prior written approval of InvLP.

## 8. **REMUNERATION**

8.1 The Fee shall be payable subject to and in accordance with this Clause 8, Schedule 4 Part 3 and Schedule 7.

8.2 In consideration of the provision of the Services to InvLP, subject to:

8.2.1 the timely submission by the Asset Manager to InvLP of the Quarterly Performance Report in accordance with Clause 3.4.5 together with an invoice in respect of the Fee; and

8.2.2 any adjustment to the Fee which applies in accordance with this Clause 8, Schedule 4 Part 3, Schedule 7 and/or the Service Credit Adjustment,

InvLP shall pay (or procure the payment of the Fee) to the Asset Manager Quarterly in arrears within the timescale set out in Clause 8.6.

8.3 The first payment of the Fee shall become payable on the Fee Start Date and shall be the Fee which is referable to the Services rendered to InvLP from the Commencement Date until the Fee Start Date.

8.4 For the avoidance of doubt but subject to Clauses 3.3.3 and 6.1.3, the Fee (as adjusted, where relevant, in accordance with Clause 8.5, Schedule 4 Part 3 and Schedule 7) shall be inclusive of all costs and expenses incurred by the Asset Manager in connection with performing the Services and its obligations under and in connection with this Agreement together with all of the Asset Manager's internal administrative costs and expenses such as salaries, office space and office equipment expenses and the Asset Manager shall be responsible for all such costs and expenses.

### 8.5 **Service Credit Adjustment**

8.5.1 The Fee shall be subject to the Service Credit Adjustment calculated and applied in accordance with Schedule 4 Part 3 and/or Schedule 7.

8.5.2 For the avoidance of doubt, InvLP's right to reduce the Fee in accordance with Schedule 4 Part 3 shall be in addition to, and not in substitution for, any other rights it may have arising from the Asset Manager's failure to provide the Services in accordance with the terms of this Agreement.

8.5.3 Any waiver by InvLP of its rights under Clause 11.3.1 shall not be a waiver of InvLP's right to reduce the Fee in accordance with Schedule 4 Part 3.

- 8.6 (this information is contained in the exempt part of the report)
- 8.7 All Fee payments should be made by bank transfer to such account as the Asset Manager shall notify to InvLP from time to time.

## 9. **DISPUTES**

- 9.1 If any dispute or difference arises in relation to this Agreement which is not resolved by the relevant parties within 20 Business Days (or such longer period as the parties may agree in writing) of the dispute or difference first arising, any relevant party shall be entitled to refer such matter to an Expert for determination where it considers (acting reasonably) that such matter is capable of determination by an Expert.
- 9.2 The Expert shall have due regard to the provisions of this Agreement and shall act as an Expert and not as an arbitrator. The Expert shall allow each relevant party to make representations and counter-representations within a reasonable period and shall give his decision as soon as reasonably practicable.
- 9.3 The decision of the Expert shall be notified in writing to all relevant parties, together with the reasons for and any evidence on which he has relied in coming to such decision. The Expert's decision shall be final and binding upon them in the absence of manifest error or fraud and the costs of the determination shall be borne as the Expert shall determine is fair and reasonable in all the circumstances.
- 9.4 If the Expert shall relinquish his or her appointment or die or if it shall become apparent that for any reason he or she will be unable to complete his or her duties hereunder then any relevant party may apply to the appropriate President (or the next the most senior available officer) of the Royal Institution of Chartered Surveyors or the Law Society or the Institute of Chartered Accountants in England and Wales (as appropriate to the determination of an appropriate expert in relation to a Deadlock Matter under the Members' Agreement) for a substitute to be appointed in his or her place which procedure may be repeated as many times as necessary.
- 9.5 In circumstances where no relevant party has referred the dispute or difference which has arisen in relation to this Agreement for determination by an Expert in accordance with the provisions of Clause 9.1 within 10 Business Days of the dispute or difference first arising (or from the date that the relevant parties agree (acting reasonably) that the matter is not capable for decision by an Expert, if earlier), the relevant parties shall attempt to settle the matter by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure. Unless otherwise agreed between the relevant parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("**Mediation Notice**") to the other relevant party or parties requesting a mediation. A copy of the request should be sent to CEDR. The mediation will take place in the Borough, and will start not later than 20 Business Days after the date of the Mediation Notice. If the matter is not settled by mediation within 30 Business Days of commencement of the mediation or within such further period as the relevant parties may agree in writing, then InvLP shall be entitled to terminate this Agreement by the service of 30 Business Days' notice upon the Asset Manager.

## 10. **LIABILITY**

- 10.1 Subject to Clause 10.2, the liability of the Asset Manager to InvLP, any HDV Party or the Council under or in connection with this Agreement for all claims, whether in contract, tort (including negligence) or otherwise, shall not exceed (this information is contained in the exempt part of the report) per claim and/or (this information is contained in the exempt part of the report) (provided that this limitation on liability shall not apply in respect of claims under or in connection with paragraphs 9.2 and 11.2 of Part 1 and paragraphs 1.3, 1.12 and 1.19 of Part 2 of Schedule 6).
- 10.2 Nothing in this Agreement shall exclude or limit the liability of any party for:
- 10.2.1 death or personal injury caused by its negligence (or that of its contractors, agents or employees); or

10.2.2 fraud or fraudulent misrepresentation.

## 11. DURATION AND TERMINATION

11.1 This Agreement shall commence on the Commencement Date and shall continue in force until the earliest to occur of:

11.1.1 the fifth anniversary of the date of this Agreement;

11.1.2 the date this Agreement is terminated forthwith by notice in writing by InvLP in accordance with Clause 27 (Duration, Termination and Winding Up of the HDV Parties) of the Members' Agreement;

11.1.3 the date of termination of the Members' Agreement;

11.1.4 the date agreed in writing between the parties; and

11.1.5 the date terminated in accordance with this Clause 11.2 or 11.3.

11.2 The appointment of the Asset Manager (and its authority to act) shall terminate immediately upon any of the following occurring:-

11.2.1 the Asset Manager being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

11.2.2 an administrative receiver, receiver, administrator, liquidator or similar officer is appointed in respect of the entirety of the Asset Manager's assets or undertaking;

11.2.3 a floating charge crystallising over the Asset Manager's material assets and the holder of such floating charge successfully takes steps to enforce such security;

11.2.4 a distress, distraint, charging order, attachment, execution or other process is levied against any of the Asset Manager's assets and remains undischarged;

11.2.5 there being an unsatisfied judgment or order of any court or tribunal, or award of any arbitrator, outstanding against the Asset Manager;

11.2.6 a meeting of the Asset Manager's creditors, or any class of them, is held or summoned or a proposal is made for a moratorium, composition or arrangement in relation to any of its debts, or for a voluntary arrangement under Part 1 of the Insolvency Act 1986; and/or

11.2.7 anything analogous to any of the events set out in Clauses 11.2.1 to 11.2.6 (inclusive) occurring in respect of the Asset Manager in any jurisdiction.

11.3 Without prejudice to any other rights or remedies of the parties this Agreement may be terminated forthwith (in whole or in relation to certain Services only) by notice in writing by InvLP in the event of:-

11.3.1 [the Asset Manager suffering a Category 1 KPI Breach provided that where such breach is capable of remedy, InvLP shall first serve written notice on the Asset Manager referring to this Clause and requiring it to remedy such breach within 20 Business Days and if the Asset Manager shall remedy the relevant breach during that period then, for the purposes of this Clause 11.3.1 only (and without prejudice to the ability of InvLP to make a Service Credit Adjustment in respect of the same pursuant to Clause 8.5), the remedied breach shall be deemed not to have occurred;]<sup>1</sup>

11.3.2 the Asset Manager:-

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<sup>1</sup> Note: Category 1 KPI Breach to be considered as part of KPI work up process

- (a) committing a Material Breach of this Agreement which is not capable of remedy; and/or
  - (b) committing a Material Breach of this Agreement which is capable of remedy and the Asset Manager has failed to remedy such breach within the requisite time period following the service upon the Asset Manager of a written notice in accordance with Clause 11.4;
- 11.3.3 the Asset Manager committing or knowingly permitting any act to be committed which is illegal, fraudulent or dishonest;
- 11.3.4 the Asset Manager failing to comply with the requirements set out in Clause 14;
- 11.3.5 the Asset Manager bringing the standing of InvLP, any HDV Party and/or the Council into material disrepute or bringing about material adverse publicity in relation to any HDV Party and/or the Council and, following the service upon it of written notice from such party informing the Asset Manager that this is the case, the Asset Manager failing to remedy or change the matter, event or circumstance which has caused such serious disrepute or material adverse publicity (as the case may be) within 20 Business Days of the date of service of such notice;
- 11.3.6 PSP or any member of its Group ceasing to be a Member;
- 11.3.7 the Asset Manager serving a notice upon InvLP in compliance with Clause 14.3 or failing to serve a notice in breach of Clause 14.3;
- 11.3.8 the cap on liability pursuant to Clause 10.1 being reached or exceeded (unless the Asset Manager confirms to InvLP its assumption of liability beyond such cap and InvLP agrees (in its absolute discretion) to accept such assumption of liability); and/or
- 11.3.9 [the Asset Manager failing to comply with its obligations set out in paragraph [redacted] of Schedule 4 (Key Performance Indicators)];<sup>2</sup>
- 11.4 Where the Asset Manager has committed a breach of any obligation of this Agreement which is capable of remedy, InvLP may serve notice on the Asset Manager specifying that a breach has occurred and requiring the Asset Manager to remedy it within 20 Business Days after the date of the service of the relevant notice.
- 11.5 Notwithstanding any other provision of this Agreement, the parties agree that no matter shall constitute a termination event of the Asset Manager pursuant to Clause 11.3 where such termination event is materially:-
- 11.5.1 attributable to external factors outside of the control of the Asset Manager or which occur as a result of a Force Majeure Event;
  - 11.5.2 attributable to the fact that an extension of time has been granted in respect of one or more of the KPI Target Achievement Thresholds;
  - 11.5.3 attributable to a failure by the Council to co-operate with the Asset Manager or InvLP (or an HDV Party) in its capacity as a Member;
  - 11.5.4 attributable to the delay by InvLP or any HDV Party in respect of any decision or action required by InvLP (or the HDV Party as applicable) (save to the extent that any such delay arises out of any fault on the part of the Asset Manager); and/or
  - 11.5.5 attributable to an act or omission of InvLP (or any HDV Party) and/or the Council, or a breach by any one or more of them of their respective obligations under the Project Agreements,

<sup>2</sup> Note: A suitable termination mechanism is to be developed before signature of this document which will refer to KPIs, the tolerances of which will be agreed between the HDV Board and the Asset Manager once the KPI table is populated.

provided that this Clause 11.5 shall not apply to or affect the termination events set out in Clause 11.3.3 and Clause 11.3.6.

## 12. CONSEQUENCES OF TERMINATION

12.1 On a termination of this Agreement (whether in whole or in part) pursuant to Clause 11 InvLP shall be entitled to engage a third party asset manager for the Investment Portfolio Properties (in respect of those Services which have been terminated pursuant to Clause 11).

12.2 Upon any termination of this Agreement (whether in whole or in part) the Asset Manager shall take action to:

12.2.1 wind-up the terminated Services; or

12.2.2 on the reasonable instruction of InvLP, facilitate the handover of the management of the Investment Portfolio Properties and handover the terminated Services and any relevant information (including any Confidential Information) to any third party asset manager engaged by InvLP, any other HDV Party or the Council as directed by InvLP,

in an orderly and timely manner (with effect from the date of the appointment of such third party asset manager, where relevant) and in compliance with the reasonable instructions of InvLP as to the transition of such management and Services; and

12.2.3 cause to be delivered to InvLP all Confidential Information, relevant documents, records, information, data, drawings, specifications, calculations, and other materials under its control and relating to the Investment Portfolio Properties (whether in the course of preparation or completed) or prepared in accordance with this Agreement including any copies thereof (whether electronic or otherwise) together with copies of any other relevant records, information or documentation which is relevant and necessary for the provision of the Services. The Asset Manager shall not have, or purport to claim, a lien over any such documents or materials.

12.3 Termination of this Agreement (in whole or in part) for any reason whatsoever shall be without prejudice to the accrued rights or claims of any party hereto in relation to any act or omission of the other prior to such termination.

12.4 Notwithstanding the termination of this Agreement, the provisions of this Agreement shall continue to bind each party insofar as and for so long as may be necessary to give effect to their respective rights and obligations hereunder.

## 13. FORCE MAJEURE

13.1 If by reason of a Force Majeure Event occurring on or after the Commencement Date a party is wholly or partially unable to carry out its obligations under this Agreement (the "**Affected Party**") then the Affected Party shall promptly serve notice in writing to the other relevant party or parties, setting out:-

13.1.1 the particulars of the Force Majeure Event and its effect upon its performance under this Agreement; and

13.1.2 to the extent known, the expected duration of the Affected Party's failure to perform.

13.2 An Affected Party shall not be entitled to relief under Clause 13.4 for any failure or delay in complying with its obligations under or in accordance with this Agreement until the notice specified in Clause 13.1 has been provided to each other relevant party.

13.3 The Affected Party shall:-

13.3.1 make reasonable efforts to prevent, remove, avoid and mitigate the effects of any Force Majeure Event including recourse to alternative acceptable sources of services, equipment, supplies and materials and the payment of reasonable sums of money;

- 13.3.2 use reasonable efforts to ensure a prompt resumption of normal performance of this Agreement after the cessation of a Force Majeure Event; and
- 13.3.3 when reasonably requested by another party, provide that party with notice more fully describing the relevant Force Majeure Event, its cause, the efforts being made to remove, avoid and mitigate its effects and an estimate of the duration of the Force Majeure Event.
- 13.4 Following the service of notice in accordance with Clause 13.1 and provided that the Affected Party has complied with the provisions of Clause 13.3, the Affected Party shall not be liable for any cost, expense or damages, failure or delay in complying with its obligations under or in accordance with this Agreement (including, for the avoidance of doubt, compliance with the Key Performance Indicators) to the extent that it is prevented from or delayed in performing its obligations by one or more Force Majeure Events and its or their effects or by any combination of those events and effects. Such obligations shall be suspended for such period or periods as may be required for the Affected Party to overcome the effects of such Force Majeure Event provided, however, that:-
- 13.4.1 the suspension of performance is of no greater scope and of no longer duration than the Force Majeure Event and the time reasonably necessary to attend to the consequences of such Force Majeure Event;
- 13.4.2 no relief shall be granted to a party in accordance with this Clause 13 to the extent that such failure or delay would have been experienced by such party even if such Force Majeure Event had not occurred; and
- 13.4.3 in the event that the Affected Party gives notice under Clause 13.1 and the relevant Force Majeure Event continues for a continuous period of three months during which the Affected Party is unable to perform its obligations under this Agreement, then either InvLP or the Asset Manager shall be entitled to terminate this Agreement by notice in writing.
- 13.5 The Affected Party shall promptly service notice in writing to the other relevant party following:-
- 13.5.1 the cessation of the relevant Force Majeure Event; and
- 13.5.2 the cessation of the effects of such Force Majeure Event on the enjoyment by such Affected Party of its rights or the performance by it of its obligations under this Agreement.

#### 14. **INDEMNITY AND INSURANCE**

- 14.1 The Asset Manager shall indemnify and keep indemnified, InvLP, the Council and each of the HDV Parties against all and any losses, costs, claims, expenses and proceedings arising as a consequence of its fraud, negligence, reckless disregard, misconduct, bad faith and/or any breach by it of any of its obligations under this Agreement (or any breach by any person to whom it delegates the performance of any of the Services and/or any of its obligations under this Agreement whether under an authorised Appointment or otherwise).
- 14.2 The Asset Manager warrants that it has in force:-
- 14.2.1 professional indemnity insurance cover for not less than (this information is contained in the exempt part of the report) per individual claim and/or (this information is contained in the exempt part of the report) in the aggregate per year;
- 14.2.2 public liability insurance for not less than (this information is contained in the exempt part of the report) per individual claim; and
- 14.2.3 employer's liability insurance for not less than (this information is contained in the exempt part of the report) per individual claim,

and undertakes to InvLP to maintain such level of insurance cover in respect of the provision of the Services for the period of this Agreement unless such other level of insurance is otherwise agreed by InvLP (acting reasonably having due regard to Good Industry Practice and insurance cover

which is available in respect of the Services in the prevailing market) from time to time (the "**Insurance Cover**").

14.3 The Asset Manager shall notify InvLP immediately upon:-

14.3.1 becoming or believing it may become unable to effect professional indemnity insurance and shall immediately explain the reasons for such inability;

14.3.2 becoming aware of its Insurance Cover becoming void or voidable by reason of an act or omission of the Asset Manager; or

14.3.3 becoming aware that, as a result of an act or omission of the Asset Manager, monies that would otherwise have been recoverable under such Insurance Cover are irrecoverable,

and, in such circumstances, InvLP shall be entitled to terminate this Agreement by notice in writing served on the Asset Manager in accordance with Clause 11.3 and the Asset Manager shall be liable for any losses, costs, claims and/or proceedings arising out of any act or omission of the Asset Manager which results in the Insurance Cover becoming void or voidable.

14.4 The Asset Manager shall ensure that, prior to appointing any sub-contractors, consultants and Appointees pursuant to this Agreement, such parties have and are required to maintain professional indemnity insurance cover with a reputable insurer to a level and scope appropriate for the services to be carried out by the relevant consultant.

14.5 For the avoidance of doubt, the rights of InvLP in respect of claims for any losses, costs, claims and/or proceedings pursuant to this Clause 14 shall survive the termination of this Agreement.

14.6 The Asset Manager shall produce for inspection, on request by InvLP, documentary evidence that its professional indemnity insurance is being maintained in the form of a letter from the Asset Manager's insurance broker.

## 15. **INTELLECTUAL PROPERTY**

15.1 For the purpose of this Agreement, "**Intellectual Property**" shall mean all inventions (whether patentable or not) patents, utility models, designs (both registered and unregistered), copyright, trade and service marks (both registered and unregistered) together with all rights to the grant of and applications for the same and including all similar or analogous rights throughout the world and all future rights of such nature.

15.2 In consideration of the payment of one pound (£1.00), the receipt of which the Asset Manager hereby acknowledges:

15.2.1 if the Asset Manager makes or participates in making any invention or any design (whether registrable or not) or any copyright work in connection with the provision of the Services the Asset Manager shall disclose all relevant details of such invention, design or work to InvLP immediately. In the case of such an invention, design or work the Asset Manager shall give InvLP full particulars of the invention, design or work together with all information, data, drawings and models relating to the invention, design or work and, in the case of designs and copyright works, a copy of all such designs and works;

15.2.2 all rights in Intellectual Property which may be created by the Asset Manager in the course of the provision of the Services to InvLP shall be the sole and exclusive property of InvLP and the Asset Manager hereby assigns all such Intellectual Property to InvLP by way of present and future assignment with full title guarantee;

15.2.3 in the case of registrable rights the Asset Manager shall, if requested by InvLP, execute all documents and do all things which may be necessary or desirable for obtaining the best possible registrable position in territories specified by InvLP, and in respect of all Intellectual Property the Asset Manager shall execute all documents and do all such things as may be necessary or desirable for perfecting assignment of Intellectual Property under Clause 15.2.2 above; and

15.2.4 the Asset Manager hereby irrevocably appoints InvLP to be its attorney in its name and on its behalf to sign and execute any instrument or do anything and generally to use its name for the purpose of giving to InvLP the full benefit of the provisions of this Clause 15 and a certificate in writing in favour of any third party signed by any director or the secretary of InvLP that any instrument or act falls within the authority conferred by this Clause 15 shall be conclusive evidence that such is the case.

15.3 The Asset Manager shall not be liable for any use of the Intellectual Property by any HDV Party that is not in accordance with the licence granted pursuant to Clause 15.2.

16. **TUPE AND PENSIONS**

16.1 The provisions of Schedule 6 shall apply in relation to TUPE and pensions.

17. **CORPORATE POWERS AND OTHER UNDERTAKINGS AND WARRANTIES**

17.1 Each of parties hereby represents and warrants to the others as follows:-

17.1.1 that it has full corporate power and has taken all necessary corporate action to enable it effectively to enter into and perform its obligations under this Agreement;

17.1.2 that this Agreement, when executed by all parties, will create obligations which are valid and binding on it, and enforceable in accordance with their terms; and

17.1.3 it does not require the consent, approval or authority of any other persons to enter into or perform its obligations under this Agreement and its entry into and performance of this Agreement will not constitute any breach of or default under any contractual, governmental or public obligation binding upon it as at the Commencement Date.

18. **CONFIDENTIALITY**

18.1 Subject to Clause 18.2, the parties hereto shall be bound by the provisions of Clause 32 (Confidential Information and Freedom of Information) of the Members' Agreement as if they were parties thereto.

18.2 The Asset Manager may disclose information to its employees or advisers where the Asset Manager deems disclosure to be necessary for providing the Services in accordance with the terms and conditions of this Agreement.

19. **[DATA PROTECTION]**

19.1 With respect to the parties' rights and obligations under this Agreement, the parties agree that InvLP is the Data Controller and that the Asset Manager is the Data Processor.

19.2 The Asset Manager shall:-

19.2.1 process the Personal Data only in accordance with instructions from InvLP (which may be specific instructions or instructions of a general nature as set out in this agreement or as otherwise notified by InvLP to the Asset Manager during the term of this Agreement);

19.2.2 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any regulatory body;

19.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- 19.2.4 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
- 19.2.5 obtain prior written consent from InvLP in order to transfer the Personal Data to any sub-contractors or affiliates for the provision of the Services;
- 19.2.6 ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 19;
- 19.2.7 ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by InvLP;
- 19.2.8 notify InvLP (within five Business Days), if it receives:
- (a) a request from a Data Subject to have access to that person's Personal Data; or
  - (b) a complaint or request relating to InvLP's obligations under the Data Protection Legislation;
- 19.2.9 provide InvLP with full co-operation and assistance in relation to any complaint or request made, including by:
- (a) providing InvLP with full details of the complaint or request;
  - (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with InvLP's instructions;
  - (c) providing InvLP with any Personal Data it holds in relation to a Data Subject (within the timescales required by InvLP); and
  - (d) providing InvLP with any information requested by InvLP;
- 19.2.10 permit InvLP or InvLP's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Asset Manager's data processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by InvLP to enable InvLP to verify and/or procure that the Asset Manager is in full compliance with its obligations under this Agreement;
- 19.2.11 provide a written description of the technical and organisational methods employed by the Asset Manager for processing Personal Data (within the timescales required by InvLP); and
- 19.2.12 not Process Personal Data outside the European Economic Area without the prior written consent of InvLP and, where InvLP consents to a transfer, to comply with:
- (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
  - (b) any reasonable instructions notified to it by InvLP.
- 19.3 The Asset Manager shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this agreement in such a way as to cause InvLP to breach any of its applicable obligations under the Data Protection Legislation.

## 20. NOTICES

- 20.1 Any demand, notice, agreement or other communication given or made under or in connection with this Agreement shall be in accordance with this Clause 20.

- 20.2 Subject to Clause 20.3, any communication between InvLP and the Asset Manager in the performance of this Agreement shall be made electronically. All such electronic communication shall be sent to the electronic mail address of the General Manager on behalf of the Asset Manager (as notified from time to time by the Asset Manager to InvLP) and to the electronic mail address of a representative of InvLP (as notified from time to time by InvLP to the Asset Manager). This shall include a requirement that, to the extent achievable, any information which is to be provided by InvLP to the Asset Manager in the performance of its Services shall be provided electronically. Where any party so requires it any such electronic correspondence shall be followed with non electronic written copies which shall be posted to the receiving party.
- 20.3 Where any notices or demands are to be served in accordance with this Agreement which are more formal than day to day correspondence and communication, then such notices or demands shall be made in writing, served in non electronic format and duplicated electronically to the relevant party to the electronic mail address of the General Manager on behalf of the Asset Manager (as notified from time to time to InvLP) and in respect of all other parties, to the electronic mail address of a representative thereof (as notified from time to time to the other parties). In these circumstances, notice will be deemed to have been duly given or made:
- 20.3.1 if sent by prepaid first class post, on the second Business Day after the date of posting; or
- 20.3.2 if delivered by hand, upon delivery at the address provided for in Clause 20.4, provided however that, if it is delivered by hand on a day which is not a Business Day or after 4.00 pm in the place of receipt on a Business Day, it will instead be deemed to have been given or made on the next Business Day.
- 20.4 Any such demand, notice or other communication will be addressed, in the case of service by post or delivery by hand, to the recipient's address set out in this Agreement (or at such other address as may from time to time be notified in writing by the recipient to the sender as being the recipient's address for service).
- 20.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.
21. **NO PARTNERSHIP**
- Nothing in this Agreement constitutes a partnership or a joint venture between InvLP and the Asset Manager (or any of the parties).
22. **VARIATIONS**
- 22.1 Any additions, amendments and variations to this Agreement shall be binding only if in writing and signed by the duly authorised representatives of InvLP and the Asset Manager (in non electronic format).
- 22.2 This Agreement supersedes any previous agreements or arrangements between the parties in respect of the Services and represents the entire understanding between the parties in relation thereto.
- 22.3 **Waiver**
- 22.3.1 No waiver of any term, provision or condition of this Agreement shall be effective unless it is provided in writing by the waiving party.
- 22.3.2 A failure to exercise or delay in exercising any right or remedy under this Agreement shall operate as a waiver thereof or of any right or remedy, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise of a right or remedy.
- 22.3.3 The waiver of any term, provision or condition of this Agreement on any occasion shall not constitute a waiver of any other term, provision or condition of this Agreement or such terms, provisions or conditions on any future occasion.

22.4 This Agreement supersedes any previous agreements or arrangements between the parties in respect of the Services and represents the entire understanding between the parties in relation thereto.

## 23. COUNTERPARTS

This Agreement may be executed in the form of two or more counterparts, each executed by one or more of the parties but, provided that if all parties shall so enter the Agreement, each of the executed counterparts shall be deemed to be an original but, taken together, they shall constitute one document.

## 24. THIRD PARTY RIGHTS

With the exception of the HDV Parties and the Council, a person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 25. INVALIDITY AND SEVERANCE

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair the legality, validity or enforceability in that jurisdiction, or any other jurisdiction, of any other provision of this Agreement.

## 26. GOVERNING LAW AND JURISDICTION

26.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

26.2 The parties agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement (whether of a contractual or tortious nature or otherwise) and submit to the jurisdiction of those courts.

## 27. KEY PERFORMANCE INDICATORS

(this information is contained in the exempt part of the report)

## 28. RESOURCE PLAN<sup>3</sup>

28.1 The parties acknowledge that as at the date of this Agreement they are in the process of reviewing and finalising a detailed resource plan setting out how the Asset Manager will resource the services to provided pursuant to this Agreement.

28.2 The parties shall work together to review and discuss the proposed resource plan in order to agree (within three months of the date of this Agreement) a final form of resource plan to be incorporated into this Agreement (the "**Final Resource Plan**") in place of the provisions currently set out in Schedule 3 (the "**Indicative Provisions**").

28.3 The parties acknowledge that the Indicative Provisions are indicative only as at the date of this Agreement and will be used solely for the purposes of working up the Final Resource Plan to be incorporated into this Agreement in accordance with Clause 28.2.

**SIGNED** by or on behalf of the parties on the date which first appears in this Agreement.

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<sup>3</sup> Note: A schedule of grades of staff and rates to be incorporated into this Agreement prior to signature that reflects the provisions in LL's Final Tender Solution.

**EXECUTED** (but not delivered  
until the date hereof)  
**AS A DEED** by  
**[INVLLP]**  
acting by two authorised signatories

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.....  
Signature of Authorised Signatory

.....  
Signature of Authorised Signatory

**EXECUTED** (but not delivered  
until the date hereof)  
**AS A DEED** by  
**[ASSET MANAGER]**  
acting by two authorised signatories

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Signature of Authorised Signatory

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Signature of Authorised Signatory

DRAFT

## SCHEDULE 1

### DEFINITIONS AND INTERPRETATION

#### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (including in the Schedules), the following words, expressions and meanings shall, unless the context otherwise requires and/or save where expressed otherwise, have the meanings set opposite them and words and expressions which are not defined in this Agreement but are capitalised shall have the meanings ascribed to them in the Members' Agreement:-

"Additional Entry Date"	has the meaning given to it in Clause 27.2.2
"Affected Party"	has the meaning given to it in Clause 13.1
"Agreed Form"	means in a form agreed between the parties prior to the execution of this Agreement and either initialled by the parties (or on their behalf) for the purpose of identification or executed and delivered contemporaneously with the execution of this Agreement
"Agreement for Sale"	means the agreement for sale of the Investment Portfolio of properties situated in Haringey dated on or around the date hereof and made between (1) the Council; and (2) Haringey Delivery Vehicle LLP
"Agreement"	means this deed (including any Schedule to it), as amended, varied, supplemented or replaced from time to time in accordance with its terms
"AM Sum at Risk"	has the meaning given to it in Part 3 of Schedule 4
"Appointee"	has the meaning given to it in Clause 4.6
"Appointment"	has the meaning given to it in Clause 4.6
"Approved Budget"	means the approved budget set out in the Investment Business Plan
"Asset Management Agreement Guarantee"	means the guarantee entered on or around the date of this Agreement to be provided by the Guarantor to [InvLP], guaranteeing the obligations of the Asset Manager pursuant to this Agreement
"Borough"	means the geographical area of the London Borough of Haringey from time to time
"Business Day"	means 9.00 am to 5.00 pm on any day (other than a Saturday) on which clearing banks in the City of London are open for the transaction of normal sterling banking business and " <b>Business Days</b> " shall be construed accordingly
"Business Plan"	has the meaning given to it in the Members' Agreement
"Business"	means the business of InvLP as more particularly defined in the Members' Agreement
"Category"	has the meaning given to it in Part 3 of Schedule 4

<b>"Category 1 KPI Breach"</b>	means, in relation to a Key Performance Indicator, a failure to achieve such KPI to the extent specified in Column [E] of the KPI Table (in the same row as the relevant Key Performance Indicator)
<b>"Category 1 Sum at Risk"</b>	has the meaning given to it in Part 3 of Schedule 4
<b>"Category 2 Sum at Risk"</b>	has the meaning given to it in Part 3 of Schedule 4
<b>"Category 3 Sum at Risk"</b>	has the meaning given to it in Part 3 of Schedule 4
<b>"Category Sum at Risk"</b>	has the meaning given to it in Part 3 of Schedule 4
<b>"CEDR"</b>	has the meaning given to it in Clause 9.5
<b>"Commencement Date"</b>	means the date of this Agreement
<b>"Confidential Information"</b>	means all information whether in writing, electronic or data form or otherwise (including but not limited to know-how) (not in the public domain otherwise than as a consequence of a breach by the Asset Manager of its obligations under this Agreement) which may be imparted in confidence or be of a confidential nature relating to the Business or plans or internal affairs of InvLP including but without limitation, all information of a confidential nature relating to the Investment Portfolio Properties, marketing information, unpublished information relating to the Business, InvLP or to any actual or potential customer, tenant or landlord or supplier or officer or employee of InvLP
<b>"Council"</b>	means the London Borough of Haringey
<b>"Data Controller"</b>	has the same meaning as set out in the Data Protection Act 1998
<b>"Data Processor"</b>	has the same meaning as set out in the Data Protection Act 1998
<b>"Data Protection Legislation"</b>	means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), 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 processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner and any relevant successor laws and regulations
<b>"Data Subject"</b>	has the same meaning as set out in the Data Protection Act 1998
<b>"Deadlock Matter"</b>	has the meaning given to it in the Members' Agreement
<b>"Delegation Policy"</b>	means the delegation policy set out in Schedule 3 of the Members' Agreement
<b>"Detailed KPIs"</b>	means the Key Performance Indicators agreed between InvLP and the Asset Manager pursuant to Clause 27 in relation to the Investment Property Portfolio and to be set out in Schedule 4 Part 2
<b>"Development Framework Agreement"</b>	has the meaning given to it in the Members' Agreement

<b>"Direct Losses"</b>	means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis) proceedings, demands and claims whether arising under statute, contract or at common law but excluding Indirect Losses
<b>"Entry Anniversary"</b>	has the meaning given to it in Clause 27.2.1
<b>"Expert"</b>	has the meaning ascribed to it in the Members' Agreement save that references in such definition to "the Members" shall be construed as being references to "the parties" to this Agreement and a reference to "Working Day" shall be construed as being a reference to "Business Day" as defined in this Agreement and also provided that the Expert for the purposes of Clause 27 shall be a Chartered Surveyor having at least 10 years' post-qualification experience in the strategic asset management of premises in the London area
<b>"Fee Start Date"</b>	means the Investment Portfolio Completion Date
<b>"Fee"</b>	(this information is contained in the exempt part of the report)
<b>"Fee Uplift Mechanism"</b>	has the meaning given to it in Clause 27.3.2
<b>"Final Resource Plan"</b>	has the meaning given to it in Clause 28.2
<b>"First KPI Failure"</b>	has the meaning given to it in Part 3 of Schedule 4
<b>"Force Majeure Event"</b>	means the occurrence after the Commencement Date of:- <ul style="list-style-type: none"> <li>(a) war, civil war, civil commotion, riot, rebellion, enemy action, armed conflict or terrorism;</li> <li>(b) act of God, lightning, earthquake, fire, flood, storm, tempest or extreme weather condition;</li> <li>(c) lock out or strike by employees of third parties (excluding employees of the Asset Manager's Group);</li> <li>(d) nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the actions of or breach by the Asset Manager or its sub-contractors; or</li> <li>(e) pressure waves caused by devices travelling at supersonic speeds.</li> </ul>
<b>"General Manager"</b>	means the general manager of the Asset Manager who is responsible for ensuring that the Services are delivered, to be notified to InvLP by the Asset Manager in accordance with Clause 2.7 (and any replacement from time to time)
<b>"Good Industry Practice"</b>	means such practice as may be expected of a properly qualified, competent and experienced asset manager accustomed to carrying out services of the same or a similar nature, scope and complexity to the Services in relation to investment portfolios of a similar nature, scope, complexity and size as the Investment Portfolio Properties, such practice to be carried out in a proper, prompt and business like manner using all the skill, expertise and attention as is to be expected of such an asset manager

<b>"Group"</b>	has the meaning given to it in the Members' Agreement
<b>"Guarantor"</b>	means the guarantor under the Asset Management Agreement Guarantee
<b>"Guidance"</b>	means any applicable industry standard guidance or industry standard directions which relate to the Services
<b>"HDV"</b>	means [HARINGEY DEVELOPMENT VEHICLE LLP] a limited liability partnership registered in England and Wales (Number [ xxx]) whose registered office is at [ xxx];
<b>"HDV Party"</b>	has the meaning given to it in the Members' Agreement
<b>"ICT"</b>	means information and communication technology
<b>"Indicative KPIs"</b>	means the indicative KPIs set out in Schedule 4 Part 1
<b>"Indicative Provisions"</b>	has the meaning given to it in Clause 28.2
<b>"Indirect Losses"</b>	means loss of profit, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to loss of revenue under this Agreement
<b>"Initial Transfer Date"</b>	means the commencement of the Services by the Asset Manager pursuant to this Agreement
<b>"Insurance Cover"</b>	has the meaning given to it in Clause 14.2
<b>"Intellectual Property"</b>	has the meaning given to it in Clause 15.1
<b>"Investment Business Plan"</b>	has the meaning given to it in the Members' Agreement
<b>"Investment Portfolio Completion Date"</b>	has the meaning given to it in the Agreement for Sale
<b>"Investment Portfolio Property"</b>	has the meaning given to it in the Members' Agreement together with any additional properties which InvLP shall incorporate into its portfolio from time to time as notified to the Asset Manager
<b>"Investment Portfolio"</b>	has the meaning given to it in the Agreement for Sale
<b>"InvLP Board"</b>	means the board of nominees set up and maintained by InvLP in accordance with Clauses 7 and 8 of the Members' Agreement
<b>"Key Performance Indicators"</b>	means the performance measures for the provision of certain of the Services set out in the KPI Table being the Indicative KPIs and the Detailed KPIs as may be amended from time to time in pursuant to Clause 27 or otherwise with the prior written consent of InvLP and the Asset Manager, and <b>"KPIs"</b> shall be construed accordingly
<b>"Key Personnel"</b>	has the meaning given to it in Clause 2.6
<b>"Key Services"</b>	means those Services designated as "Key Services" in Schedule 2 (Services)

<b>"KPI Table"</b>	means the table at Schedule 4 Part 2 as amended from time to time in accordance with this Agreement
<b>"KPI Target Achievement Threshold"</b>	means, in relation to a Key Performance Indicator, the target achievement threshold set out in Column [B] of the KPI Table in the same row as the relevant Key Performance Indicator
<b>"Material Breach"</b>	means a breach of any of the terms of this Agreement which is material and/or persistent having regard to all relevant circumstances including, without limitation, the nature of the breach (and in particular whether it be intentional, negligent or otherwise), the regularity with which the obligation which has been breached and the consequences of the breach
<b>"Measurement Provisions"</b>	has the meaning given to it in Part 3 of Schedule 4
<b>"Mediation Notice"</b>	has the meaning given to it in Clause 9.5
<b>"Members"</b>	means the members of the HDV from time to time and <b>"Member"</b> shall be construed as referring to one of them as the context may require
<b>"Members' Agreement"</b>	means the Members' Agreement dated on or around the date of this Agreement and entered into between [(1) the Council (2) [PSP]; (3) the HDV; (4) DevLLP; (5) InvLP; (6) NomineeCo; and (7) the PSP Guarantor], as such agreement may be varied or supplemented from time to time
<b>"Model Mediation Procedure"</b>	means CEDR mediation procedure as described in Clause 9.5.
<b>"Objectives"</b>	means the objectives of InvLP as more particularly defined in the Members' Agreement
<b>"Personal Data"</b>	has the same meaning as set out in the Data Protection Act 1998
<b>"Process"</b>	has the meaning given to it under the Data Protection Legislation but, for the purposes of this Agreement, it shall include both manual and automatic processing
<b>"Procurement Policy"</b>	means the policy adopted by InvLP for the procurement of works and/or services set out in Schedule 4 of the Members' Agreement
<b>"Project Agreements"</b>	has the meaning given to it in the Members' Agreement
<b>"Property Management Agreement"</b>	means the agreement between InvLP and the Property Manager for the provision of property management services in respect of the Investment Property Portfolio
<b>"Property Manager"</b>	means [REDACTED]
<b>"Proposed KPIs"</b>	has the meaning given to it in Clause 27.3.1
<b>"PSP"</b>	means [PSP] (Company Number [REDACTED]) and such other group entity as [PSP] (Company Number [REDACTED]) may transfer its interest to in accordance with the provisions of the Members' Agreement
<b>"Quarter"</b>	has the meaning given to it in the Members' Agreement

<b>"Quarterly Management Report"</b>	means the quarterly report to be prepared by the Asset Manager setting out the Asset Manager's performance and delivery of the Services during the immediately preceding month against the Key Performance Indicators and otherwise in accordance with the terms of this Agreement
<b>"Quarterly Performance Report"</b>	has the meaning given to it in Clause 3.4.5
<b>"Relevant KPI Sum at Risk"</b>	has the meaning given to it in Part 3 of Schedule 4
<b>"Relevant Quarter"</b>	has the meaning given to it in Clause 3.4.5
<b>"Resource Plan"</b>	means the plan to be worked up in accordance with Clause 28 of this Agreement which the parties agree will be updated on an annual basis in accordance with the review of the Business Plan
<b>"Second KPI Failure"</b>	has the meaning given to it in Part 3 of Schedule 4
<b>"Service Credit Adjustment"</b>	means the upwards or downwards adjustment (if any) to be made to the Fee calculated in accordance with Schedule 4 Part 3 and Schedule 7
<b>"Services"</b>	means the services outlined in Schedule 2 to be provided to InvLP (and any other services as may be agreed between InvLP and the Asset Manager from time to time) to be delivered in accordance with this Agreement
<b>"Staff"</b>	means all persons employed by the Asset Manager to perform its obligations under the Agreement together with the Asset Manager's servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Agreement
<b>"Start Date"</b>	means the date upon which Services are first rendered by the Asset Manager under this Agreement
<b>"Statutory Requirements"</b>	means insofar as they relate to or affect the Services the requirements of any statute or subordinate legislation
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

1.2 Clause 1.2 of the Members' Agreement shall apply *mutatis mutandis* to this Agreement.

## SCHEDULE 2

### SERVICES<sup>4</sup>

Without prejudice to the other provisions of this Agreement, the Asset Manager shall carry out and complete the Services listed below, and all such other services as are reasonably incidental to or reasonably flow from those set out below, in accordance with the terms of this Agreement and in such a manner as to achieve the Objectives and any objectives contained within the Investment Business Plan.

Where a timescale for delivery of a Service is not specified or is not subject to a Key Performance Indicator the timescale shall be deemed to be such timescale as would be Good Industry Practice.

References in this Schedule to the "HDV" shall be construed as meaning references to the HDV or relevant HDV Party as applicable. The following services are indicative and the Council will develop this further at the next stage of the procurement.

<b>Asset Management Services</b>	
<b>Supervision of the Property Manager</b>  (Key Service)	<p>Supervise the Property Manager on the basis of the Property Management Agreement</p> <p>The Asset Manager will hold a monthly property management review focussing on, but not limited to monitoring the Property Manager's activities.</p> <p>The Asset Manager will use all reasonable efforts to ensure that the Property Manager submits financial reports, statements and schedules which are required under the terms of the Property Management Agreement, within the specified time schedule. This will include monthly financial statements, rent rolls and rental delinquency reports. Upon receipt, the Asset Manager will review the financial reports and monitor results of operations to identify and evaluate problems, or potential problems, at the earliest possible stage.</p>
<b>Management Information</b>	To ensure that all relevant changes to the asset management database are advised to InvLP in such form as InvLP shall require (which may include the electronic transfer of information).
	To provide such information as InvLP may require from the asset management database in an agreed standard format.
	To allow InvLP and the HDV's auditor to inspect the financial records and accounts maintained by the Asset Manager in respect of the properties and to take such copies thereof as it shall reasonably require.
	To retain all management information in relation to each property or lease for such period as InvLP shall from time to time require (which, in the absence of any direction, shall be until 6 years after any property has been sold and 6 years after the termination of any lease).
	The Asset Manager will submit summary reports to the HDV on a quarterly basis. These reports will provide a review of operations for the prior quarter, including financial information together with explanations of any material variances in approved budgets.
	Review and reforecast asset management strategy papers on a quarterly basis.

<sup>4</sup> Note that a final review of the Services will be undertaken prior to signature

	Ensure all asset management strategies are approved by InvLP on an annual basis as part of the business plan process and that instructions to the Property Manager and other advisors are in accordance with the business plan
<b>Building Management</b>	The Asset Manager will direct or authorise the Property Manager to make or cause to be made such repairs, improvements, modifications and purchases as it deems necessary or advisable without the approval of InvLP if the costs are payable via the service charge and within an approved non-recoverable budget.
<b>Environmental Liabilities</b>	To advise InvLP in respect of statutory environmental liability matters, and act, where appropriate and competent to do so, upon receipt of advice from environmental consultants or Property Manager appointed by InvLP.
<b>Health, Safety and Environmental Statutory Requirements including Fire Precautions</b> <b>(Key Service)</b>	The Asset Manager to report any health and safety concerns into InvLP and update on a quarterly basis, unless significant risk, in which case a request for immediate action to be authorised shall be made to InvLP.
<b>Global Minimum Requirement (GMR's)</b> <b>(Key Service)</b>	To act in accordance with the appropriate Lendlease Global Minimum Requirements (as set out in the Members' Agreement).
<b>Outgoings</b>	To arrange payment of all outgoings properly payable in respect of the properties, save as to void and non-recoverable costs subject to prior written agreement by InvLP and the relevant clauses in this Agreement.
<b>Provision of utilities and services to the Investment Portfolio</b> <b>(Key Service)</b>	To procure that all appropriate utility and other services are provided to the properties, where required, having regard to all lease obligations and the strategy for the property agreed with InvLP.
	To ensure that all such services are provided at a competitive price and on an economic basis having regard to the nature and quality of the service required (using regular competitive tendering processes, where appropriate).
	To enter into, as manager of the properties, such contracts or other agreements as may be necessary or desirable, having regard to the strategy for the property and the policies determined by InvLP from time to time
<b>Commercial Management of the Leases</b> <b>(Key Service)</b>	Appoint and monitor the appointment of leasing agents on behalf of InvLP.

	Review and approval of a standard lease document that adequately protects the asset ownership interest. Once agreed upon, the Asset Manager will periodically review the lease and recommend changes as appropriate.
	The Asset Manager is under no obligation to ensure that notices are served for rent reviews, lease termination or any other matters of a similar nature save that the Asset Manager shall maintain a diary system and notify InvLP when it considers it advisable to serve any such notices.
	To ensure that InvLP is alerted (in accordance with agreed procedures), to all impending lease expires, lease break options, rent reviews (or increases) and other relevant dates; to ensure that all necessary or appropriate action is taken (in accordance with instructions or strategies agreed or advised from time-to-time) by InvLP, including liaising with InvLP's legal advisers in the service of all notices required to protect and enhance InvLP's interest in a timely and appropriate manner.
	Ahead of lease expiry dates ensure asset management strategy is implemented and final schedules of dilapidations are implemented, appointment of leasing agents and preparation for disposal etc.
	Negotiate lease agreement with tenants, appoint agents where necessary and seek legal advice where required.
	Liaise with legal advisers where required and ensure all notices are served.
	To ensure that InvLP is alerted (in accordance with agreed procedures), as and when required and, in particular, in relation to expiry of the leases to the necessity to have prepared all appropriate interim and final schedules of dilapidations.
<b>Financial Management and Controls</b>	Subject to the agreed strategy, to implement, at the earliest practical stage, all provisions for increases in rent.
	To ensure that all payments properly due to be paid to other parties are made in accordance with InvLP's obligations and InvLP's requirements.
	As and when money is required by the Asset Manager to enable it to meet its obligations hereunder, to make an application to InvLP for such monies in accordance with procedures agreed or specified by InvLP from time to time.
	To maintain and implement an efficient system of credit control and to take appropriate action, in liaison with InvLP's legal advisers (and InvLP, where required) for the recovery of debts.
	To ensure that all payments received on behalf of InvLP are paid promptly into an appropriate client account maintained by the Asset Manager, which shall be an interest-bearing deposit account approved by InvLP, and to account to InvLP (on behalf of InvLP) for the interest.
	All InvLP monies will be deposited with the specified main bank(s) unless InvLP has specified in writing to the Asset Manager that it requests for funds to be deposited with a bank of InvLP's choice. The Asset Manager will ensure a review of InvLP's bank is conducted periodically to determine best service, value and security.

	To make payments to InvLP's bank account (or other accounts specified by InvLP), in accordance with the requirements of InvLP from time to time by BACS, of all monies received by the Asset Manager and not required for the ongoing management of the relevant property.
	Except with the prior written agreement of InvLP, not to make any deduction, set-off or counter-claim from any payments to be made to InvLP's bank account.
	To maintain complete and up-to date records of all income and expenditure (supported with appropriate evidence of such expenditure, where appropriate).
	To provide to InvLP on a regular (quarterly unless otherwise specified) basis, both detailed and summarised financial accounts in the specified format.

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### SCHEDULE 3

#### RESOURCE PLAN

***[To be finalised following the date of this Agreement in accordance with clause 28.]***

1. The Asset Manager will provide the Services by dedicating all necessary resource from within the Asset Manager's organisation to manage the day to day delivery of the asset management process within the Services. The level of resource will be supplemented with additional resource from within the Asset Manager's organisation as required.
2. Where possible the Asset Manager will seek to utilise local person(s) to deliver the Services drawing from within the Borough (if possible).
3. The Asset Manager will provide a General Manager to InvLP to oversee and/or carry out the performance of the Services to InvLP.
4. The General Manager will provide continuity and take the lead with overall strategic responsibility to deliver the Services to InvLP.
5. The Asset Manager will provide a project accountant to InvLP to oversee and/or carry out the accounting and reporting performance of the Services. The accounts team will be based out of [the [ ] office of the Asset Manager].
6. The Asset Manager will provide secretariat services to InvLP to oversee and/or carry out the statutory services and reporting performance of the Services. The secretariat team will be based out of [the [ ] office of the Asset Manager].
7. The Asset Manager shall appoint one or more project managers to monitor and deliver the Services.
8. The Asset Manager will provide administrative support, as and when is required, to InvLP to assist in carrying out the Services and reporting performance of the Services. The Asset Manager may use the current and supplemented capability from within the Asset Manager's organisation or employ a resource local to the project.
9. Should the Asset Manager seek to replace the General Manager, it will notify InvLP of its intention to do so and provide to InvLP a person specification and C.V. of the relevant candidate for approval by InvLP.
10. The General Manager will dedicate such time and resources as are required for the proper performance of the Services.
11. The indicative resource structure chart will be provided to InvLP and updated for inclusion within the Investment Business Plans.

12. Save to the extent expressly agreed in writing between the Asset Manager and InvLP, the Asset Manager shall procure that (as a minimum) the initial key person(s) set out in the second column of the table below will be engaged in the provision of the Services for the number of days per week set out in the third column of the table below (on average):

RESOURCE	INITIAL KEY PERSONS	TIME COMMITMENT PER WEEK
General Manger (Asset Manager)	means [ ] or such other person as may be appointed from time to time by the Asset Manager with the prior written approval of InvLP	[5 days]
Assistant Asset Manager	means [ ] or such other person as may be appointed from time to time by the Asset Manager with the prior written approval of InvLP	[5] days
Community and brand Manager	means [ ] or such other person as may be appointed from time to time by the Asset Manager with the prior written approval of InvLP	[ ] days
Development Manager	means [ ] or such other person as may be appointed from time to time by the Asset Manager with the prior written approval of InvLP	[ ] days
Health and Safety and Property Manager	means [ ] or such other person as may be appointed from time to time by the Asset Manager with the prior written approval of InvLP	[ ] days
Commercial Manager	means [ ] or such other person as may be appointed from time to time by the Asset Manager with the prior written approval of InvLP	[ ] days
Administrative Co-ordinator / Office Manager	means such person as may be appointed from time to time by the Asset Manager	[ ] days

13. The Asset Manager shall provide descriptions for key appointments to the Asset Manager's team to InvLP as and when they are required by InvLP.

**SCHEDULE 4**

**KEY PERFORMANCE INDICATORS<sup>5</sup>**

(this information is contained in the exempt part of the report)

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<sup>5</sup> This list is to be fleshed out into a table of KPIs based on the format set out in the Property Management Agreement prior to signature of this Agreement.

**SCHEDULE 5**

**KEY PERSONNEL**

*[To be incorporated in accordance with Clause 2.6]*

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## SCHEDULE 6

### TUPE AND PENSIONS

#### 1. DEFINITIONS

<b>"Asset Scheme"</b>	<b>Manager</b>	Asset Manager Scheme means the pension scheme or schemes nominated by the Asset Manager and/or relevant Sub-Contractor in accordance with paragraph 1.8 of this Schedule.
<b>"Administering Authority"</b>		means Haringey Council acting in its capacity as the administering authority of the Haringey Pension Fund for the purposes of the LGPS Regulations
<b>"Admission Body"</b>		a transferee admission body for the purposes of the LGPS Regulations
<b>"Cessation Date"</b>		means any date on which the Asset Manager or any sub- contractor (as appropriate) ceases to be an Admission Body other than as a result of the termination of this Agreement or because it ceases to employ any Eligible Employees
<b>"Council"</b>		means The Mayor and Burgesses of the London Borough of Haringey Council acting in its capacity as a scheme employer for the purposes of the LGPS Fund and the LGPS Regulations
<b>"Eligible Employees"</b>		means the Transferring Employees who are either active members of and/or eligible to join the LGPS immediately before the Service Transfer Date
<b>"Employee Liability Information"</b>		means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of TUPE
<b>"Employee Schedule"</b>		means the schedule to be provided in accordance with paragraph 7
<b>"Employees"</b>		means those employees of InvLP and/or the Council wholly and/or mainly engaged in the Services immediately before the Initial Transfer Date whose names are to be listed in the Employee Schedule, save for those who object to their transfer pursuant to Regulation 4(7) of TUPE or otherwise resign or treat their employment as terminated
<b>"Future Service Provider"</b>	<b>Service</b>	means each and every service provider who shall provide any service equivalent to any of the Services immediately after expiry or earlier termination of the Agreement but excluding HDV, InvLP and the Council
<b>"Initial Transfer Date"</b>		means the commencement of the Services by the Asset Manager pursuant to this Agreement
<b>"LGPS"</b>		the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972;
<b>"LGPS Fund"</b>		the Haringey Pension Fund within the LGPS
<b>"LGPS Regulations"</b>		means the Local Government Pension Scheme Regulations 2013 (SI2013/2356) (as amended and replaced from time to time.)
<b>"Partner Admission"</b>	<b>Admission</b>	means the admission agreement in the Agreed Form entered into in accordance with the LGPS Regulations by the Administering Authority,

<b>Agreement"</b>	the Council, InvLP and the Asset Manager or Sub-Contractor (as appropriate).
<b>"Relevant Transfer"</b>	a relevant transfer for the purposes of TUPE
<b>"Returning Employees"</b>	means those persons who were employed by the Asset Manager and/or any Sub-Contractor wholly and/or mainly in the Services immediately before the Subsequent Transfer Date whose contract of employment becomes, by virtue of the application of TUPE in relation to the expiry or earlier termination of this Agreement, a contract of employment with any Future Service Provider
<b>"Service Transfer Date"</b>	means the date on which the Relevant Transfer occurs
<b>"Sub-Contractor"</b>	means any sub-contractor appointed by the Asset Manager to perform any part of the Services
<b>"Subsequent Transfer Date"</b>	means the date or dates on which services similar or equivalent to the Services or part of the Services are provided by a Future Service Provider immediately after expiry or earlier termination of this Agreement
<b>"Transferring Employees"</b>	means the employees of InvLP (excluding, without limitation, any person engaged by InvLP as an independent contractor or persons employed by any Sub-Contractor engaged by InvLP) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Agreement between InvLP and the Asset Manager, a contract of employment with someone other than InvLP
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (Council Directive 77/187/EEC as amended by Council Directive 98/50/EEC and consolidated in Council Directive 2001/23/EEC) into English Law

## 2. ENTRY

- 2.1 The parties intend and acknowledge that pursuant to TUPE on the Initial Transfer Date the contracts of employment of the Employees (save in so far as such contracts relate to benefits for old age, invalidity or survivors under any occupational pension scheme) shall have effect from and after the Initial Transfer Date as if originally made between the Asset Manager and the Employees.
- 2.2 If TUPE does not apply to any person who is an Employee, the Asset Manager shall offer to, or shall procure the offer by the relevant Sub-Contractor to, each and every such employee a new contract of employment commencing on the Initial Transfer Date under which the terms and conditions including full continuity of employment shall not differ from those enjoyed immediately prior to the Initial Transfer Date (except insofar as such terms and conditions relate to an occupational pension scheme and the identity of the employer) and the offer shall be in writing, shall be open to acceptance for a period of not less than ten (10) Business Days and shall be made:
- 2.2.1 if it is believed that TUPE will not apply to a person, not less than ten (10) Business Days before the Initial Transfer Date; or
- 2.2.2 if it is believed that TUPE applies to a person but it is subsequently decided that TUPE does not so apply, as soon as is practicable and in any event no later than ten (10) Business Days after that decision is known to the Asset Manager.

- 2.3 Where any such offer as referred to in paragraph 2.2 is accepted, InvLP and/or the Council shall indemnify and keep indemnified in full the Asset Manager on the same terms and conditions as those set out in paragraph 6.1 of this Schedule 6 as if there had been a transfer under TUPE in respect of each and every employee who has accepted any such offer.
- 2.4 Where any such offer as referred to in paragraph 2.2 is accepted, the Asset Manager shall act and shall procure that each relevant Sub-Contractor shall act in all respects as if TUPE had applied to each and every employee who has accepted any such offer and shall comply with Part 2 (Pensions) of this Agreement in respect of each and every such employee.
- 2.5 Where any such offer as referred to in Paragraph 2.2 is not accepted, InvLP and/or the Council may dismiss the employee with immediate effect and the Asset Manager shall indemnify and keep indemnified InvLP and/or the Council against all costs, liabilities and expenses (including reasonable legal expenses) which InvLP or the Council may suffer or incur in respect of that dismissal.

### **3. EMOLUMENTS AND OUTGOINGS**

- 3.1 InvLP and/or the Council shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Initial Transfer Date.
- 3.2 The Asset Manager shall be responsible or shall procure that any relevant Sub-Contractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Employees and any other person who is or will be employed or engaged by the Asset Manager or any Sub-Contractor in connection with the provision of any of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Initial Transfer Date in respect of those Employees that transfer to the Buyer or a Sub-Contractor pursuant to TUPE and from and including the date of the commencement of employment with the Buyer or the Sub-Contractor in respect of any other Employees.

### **4. EMPLOYMENT DETAILS**

InvLP and/or the Council will, within three months of the date of this Agreement, provide the Asset Manager with the Employee Schedule and Employee Liability Information and the same shall be kept up to date during the period up to the Initial Transfer Date.

### **5. PROVISION OF DETAILS AND INDEMNITY**

The Asset Manager shall as soon as reasonably practicable and in any event within five (5) Business Days following a written request by InvLP and/or the Council provide to InvLP and/or the Council details of any measures which the Asset Manager or any Sub-Contractor envisages it or they will take in relation to any employees who are or who will be the subject of a transfer pursuant to TUPE, and if there are no measures, confirmation of that fact, and shall indemnify InvLP and/or the Council against all Direct Losses resulting from any failure by the Asset Manager to comply with this obligation.

### **6. INDEMNITIES**

- 6.1 InvLP shall indemnify the Asset Manager and any Sub-Contractor for any Direct Losses suffered or incurred by the Asset Manager in connection with or as a result of:
- 6.1.1 any claim or demand by any of the Employees arising before the transfer of their employment to the Asset Manager on any Sub-Contractor as a result of any act, default or omission by InvLP or the Council;
- 6.1.2 any failure by InvLP or the Council to comply with its obligations under Regulations 13 and 14 of TUPE, or any award of compensation under Regulation 15 of TUPE, save where

such failure arises from the failure of the Asset Manager or any Sub-Contractor to comply with its duties under Regulation 13 of TUPE; and/or

6.1.3 any claim by any trade union or other body or person representing the Employees arising from or connected with any failure by InvLP or the Council to comply with any legal obligation to such trade union, body or person before the Initial Transfer Date.

6.2 The Asset Manager shall indemnify InvLP and/or the Council for any Direct Losses suffered or incurred by InvLP or the Council in connection with or as a result of:

6.2.1 any claim or demand by any of the Employees arising on or after the transfer of their employment to the Asset Manager and/or any Sub-Contractor;

6.2.2 any failure by the Asset Manager and/or any Sub-Contractor to comply with its obligations under Regulation 13 of TUPE;

6.2.3 any claim by any trade union or other body or person representing the Employees arising from or connected with any failure by the Asset Manager and/or any Sub-Contractor to comply with any legal obligation to such trade union, body or person;

6.2.4 any change or proposed change in the terms and conditions of employment or working conditions of the Employees on or after their transfer to the Asset Manager or any Sub-Contractor on the Initial Transfer Date, or to the terms and conditions of employment or working conditions of any person who would have been an Employee but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of TUPE on or before the Initial Transfer Date as a result of any such changes; and

6.2.5 any claim or demand by (i) any person who is or has been employed or engaged by the Asset Manager or any Sub-Contractor in connection with the provision of any of the Services; or (ii) any trade union or staff association or employee representative in respect of any such person in either case where such claim arises as a result of any act, default or omission of the Asset Manager and/or any Sub-Contractor after the Initial Transfer Date.

## 7. **RETENDERING**

7.1 The Asset Manager shall (and shall procure that any Sub-Contractor shall) within the period of twelve (12) months immediately preceding the expiry of this Agreement or following the service of a notice of termination under clause 10 or as a consequence of InvLP notifying the Asset Manager of its intention to retender this Agreement:

7.1.1 on receiving a written request from InvLP provide in respect of any person engaged or employed by the Asset Manager or any Sub-Contractor in the provision of the Services (the Assigned Employees) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Asset Manager or of any Sub-Contractor as the case may be until immediately before the expiry or earlier termination of this Agreement, would be Returning Employees (the Retendering Information);

7.1.2 provide the Retendering Information promptly and at no cost to InvLP;

7.1.3 notify InvLP forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;

7.1.4 be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with InvLP's prior written consent (such consent not to be unreasonably withheld or delayed);

7.1.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business

and with InvLP's prior written consent (such consent not to be unreasonably withheld or delayed); and

7.1.6 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with InvLP's prior written consent (such consent not be unreasonably withheld or delayed).

7.2 The Asset Manager shall indemnify and shall keep indemnified in full InvLP and at InvLP's request any Future Service Provider against all Direct Losses arising from any claim by any party as a result of the Asset Manager or Sub-Contractor failing to provide or promptly to provide InvLP and/or any Future Service Provider where requested by InvLP with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information.

## 8. EXIT

8.1 The parties acknowledge and agree that where all or part of the Services cease to be provided by the Asset Manager (or any Sub-Contractor of the Asset Manager) for any reason and where all or part of the Services continue to be provided by any Future Service Provider there may be a transfer of the Assigned Employees to the Future Service Provider pursuant to TUPE. If there is such a transfer, those Assigned Employees will be Returning Employees and the employment of those Returning Employees shall transfer to the Future Service Provider in accordance with TUPE with effect from the Subsequent Transfer Date.

8.2 The Asset Manager shall indemnify InvLP (both for itself, HDV, the Council and any Future Service Provider) for any Direct Losses suffered or incurred by the HDV or InvLP or any Future Service Provider in connection with or as a result of:

8.2.1 any failure by the Asset Manager or any Sub-Contractor to satisfy in full all wages, salaries or other benefits of the Returning Employees and all PAYE tax deductions and NI contributions relating thereto in respect of the Returning Employees up to the Subsequent Transfer Date;

8.2.2 any claim or demand by any of the Returning Employees arising before the Subsequent Transfer Date;

8.2.3 any failure by the Asset Manager (or any Sub-Contractor) to comply with its or their obligations before the Subsequent Transfer Date under Regulations 13 and 14 of TUPE, or any award of compensation under Regulation 15 of TUPE, save where such failure arises from the failure of InvLP or any Future Service Provider to comply with its or their duties under Regulation 13 of TUPE before the Subsequent Transfer Date; and/or

8.2.4 any claim by any trade union or other body or person representing the Returning Employees arising from or connected with any failure by the Asset Manager (or any Sub-Contractor) to comply with any legal obligation to such trade union, body or person before the Subsequent Transfer Date.

8.3 The parties acknowledge and agree that at no time is it intended or likely that any of the Asset Manager's (or any relevant Sub-Contractor's) employees will transfer to the HDV, InvLP or the Council as a consequence of the expiry or earlier termination of this Agreement. If it is found or alleged that any Asset Manager (or any relevant Sub-Contractors) employees do transfer to InvLP, the HDV or the Council as a consequence of the expiry or earlier termination of this Agreement then:

(a) InvLP, the HDV or the Council may dismiss any or all of such employees with immediate effect at any time during the period of 30 days commencing with the expiry of the 14 days referred to in paragraph 8.3(b) (the "**Indemnity Period**");

- (b) prior to any dismissal being effected in accordance with paragraph (a), InvLP, the HDV or the Council will offer the Asset Manager (or any relevant Sub-Contractor) a period of 14 days to make any of the employees a written offer of employment on such terms as the Asset Manager (or relevant Sub-Contractor) shall determine in its absolute discretion to procure that the employees withdraw any claim that their employment has transferred to InvLP, the HDV and/or the Council (as applicable). InvLP shall and/or shall procure that InvLP, the HDV and/or the Council (as applicable) shall give all reasonable assistance requested by the Asset Manager (or any relevant Sub-Contractor) to persuade such person to accept the offers; and
- (c) the Asset Manager shall indemnify and keep indemnified InvLP (for itself and for HDV and/or the Council) against all Direct Losses suffered or incurred by InvLP, HDV or the Council arising out of or in connection with the dismissal of any of the employees in accordance with paragraph (a) and the employment of any of the employees from the Subsequent Transfer Date up to the date of such dismissal.

9. **SUB-CONTRACTORS**

In the event that the Asset Manager enters into any Sub-Contract in connection with this Agreement, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this Part 1 and to Part 2 (Pensions) and shall procure that the Sub-Contractor complies with such terms. The Asset Manager shall indemnify and keep InvLP and/or the Council indemnified in full against all Direct Losses, incurred by InvLP and/or the Council or any Future Service Provider as a result of or in connection with any failure on the part of the Asset Manager to comply with this paragraph and/or the Sub-Contractor's failure to comply with such terms.

**PART 2**  
**PENSIONS**

**1. PENSION PROVISIONS**

**1.1 Asset Manager to Become an Admission Body**

Subject to the provisions of paragraph 1.7, where the Asset Manager or a Sub-Contractor employs any Eligible Employees from the Service Transfer Date, the Asset Manager shall procure that it and/or each relevant Sub-Contractor shall become an Admission Body on or before the Service Transfer Date so that the Eligible Employees shall remain eligible for membership of the LGPS from the Service Transfer Date. The Asset Manager shall before the Service Transfer Date execute and procure that each relevant Sub-Contractor executes a Partner Admission Agreement, which will have effect from and including the Service Transfer Date.

**1.2 Partner Admission Agreement**

InvLP shall procure that, before the Service Transfer Date, the Council shall execute each of the Partner Admission Agreements referred to in paragraph 1.1 (Asset Manager to Become an Admission Body) and shall procure that the Council shall use reasonable endeavours to ensure that the Administering Authority executes each such Partner Admission Agreement before the Service Transfer Date.

**1.3 Indemnity for a Breach of the Partner Admission Agreement**

Without prejudice to the generality of this paragraph 1.3, the Asset Manager hereby indemnifies InvLP and/or the Council and/or any future service provider and, in each case, their Sub-Contractors on demand from and against all losses suffered or incurred by it or them which arise from any breach by the Asset Manager or any Sub-Contractor of the terms of the Partner Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Agreement (howsoever caused and including such losses which arise as a result of a claim by the Council against InvLP).

**1.4 Indemnity or Bond**

Without prejudice to the generality of the requirements of this paragraph, the Asset Manager shall procure that it and each relevant Sub-Contractor shall as soon as reasonably practicable obtain any indemnity or bond required in accordance with the Partner Admission Agreements.

**1.5 Right of Set Off**

InvLP shall have a right to set off against any payments due to the Asset Manager under this Agreement an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Asset Manager or from any relevant Sub-Contractor (as applicable) under the Partner Admission Agreement.

**1.6 LGPS Funding and Contributions**

1.6.1 InvLP shall procure that the Council shall use its reasonable endeavours to procure that the contributions payable by the Asset Manager or by any Sub-Contractor in respect of the Eligible Employees are calculated on the basis that the pension rights of the Eligible Employees in respect of the LGPS Fund accrued prior to the Service Transfer Date are fully funded as at the Service Transfer Date on an ongoing basis in accordance with the assumptions applied by the Administering Authority in the latest triennial valuation.

1.6.2 Where the Asset Manager or any Sub-Contractor becomes an Admission Body under the LGPS in terms of Clause 10.1 above, the Asset Manager shall pay or shall procure that each relevant Sub-Contractor shall pay to the LGPS Fund in respect of those Eligible

Employees a contribution rate in respect of employer contributions of (this information is contained in the exempt part of the report) of pensionable pay as specified in the latest triennial valuation for the period of this Agreement (the "**LGPS Contribution Rate**").

1.6.3 If at any time before the expiry or termination of this Agreement the Administering Authority, pursuant to the Partner Admission Agreement or the LGPS Regulations, requires the Asset Manager or any Sub-Contractor to pay in respect of any or all of Eligible Employees during this Agreement a contribution rate in respect of employer contributions (which rate shall, for the avoidance of doubt, include any costs or accelerated contributions, exit payments (including but not limited to payments under Regulation 64 of the LGPS Regulations), penalties, fees or other expenses including costs relating to ill-health, early retirement or redundancy benefits), which is greater than the LGPS Contribution Rate, the amount by which the contributions are greater than those which would have been payable if the contribution rate had been the LGPS Contribution Rate shall be the sole responsibility and liability of InvLP. InvLP shall reimburse the Asset Manager or any Sub-Contractor on a monthly basis the additional sums incurred by the Contractor or Sub-Contractor as a result of the contribution rate exceeding the LGPS Contribution Rate.

1.6.4 If at any time before the expiry or termination of this Agreement the Administering Authority, pursuant to the Partner Admission Agreement or the LGPS Regulations, requires the Asset Manager or any Sub-Contractor to pay in respect of any or all of Eligible Employees during this Agreement a contribution rate in respect of employer contributions (which rate shall, for the avoidance of doubt, include any costs or accelerated contributions, exit payments (including but not limited to payments under Regulation 64 of the LGPS Regulations), penalties, fees or other expenses including costs relating to ill-health, early retirement or redundancy benefits), which is less than the rate (the "Collar Contribution Rate") which is (this information is contained in the exempt part of the report) below the LGPS Contribution Rate, the amount by which the contributions are less than those which would have been payable if the contribution rate was the Collar Contribution Rate shall be repaid to the InvLP. The Asset Manager and any Sub-Contractor shall reimburse the InvLP on a monthly basis the cost savings made by the Asset Manager and any Sub-Contractor as a result of the contribution rate being less than the Collar Contribution Rate.

## 1.7 **Asset Manager Ceases to be an Admission Body**

If the Asset Manager or any Sub-Contractor employs any Eligible Employees from the Service Transfer Date and:

- 1.7.1 the Asset Manager or any relevant Sub-Contractor does not wish to offer those Eligible Employees membership of the LGPS;
- 1.7.2 InvLP, the Asset Manager or any relevant Sub-Contractor are all of the opinion that it is not possible to operate the provisions of paragraphs 1.1 (Asset Manager to Become an Admission Body) to 1.5 (Right of Set Off) inclusive; or
- 1.7.3 if for any reason after the Service Transfer Date the Asset Manager or any relevant Sub-Contractor ceases to be an Admission Body other than on the date of termination or expiry of this Agreement or because it ceases to employ any Eligible Employees,

then the provisions of paragraphs 1.1 (Asset Manager to Become an Admission Body) to 1.5 (Right of Set Off) inclusive shall not apply (without prejudice to any rights of InvLP under those paragraphs) and the provisions of paragraph 1.8 (Asset Manager Scheme) shall apply.

## 1.8 **Asset Manager Scheme**

Where this paragraph 1.8 applies pursuant to paragraph 1.7, the following shall apply:

- 1.8.1 the Asset Manager shall or shall procure that any relevant Sub-Contractor shall not later than the Service Transfer Date or the Cessation Date (as the case may be) nominate to

InvLP and the Council in writing the occupational pension scheme or schemes which it proposes shall be (the Asset Manager Scheme for the purposes of this paragraph 1.8). Such pension scheme or schemes must be:

- (a) established within three (3) months of the Service Transfer Date or Cessation Date (as the case may be) and maintained until any payment to be made under Appendix 2 (Bulk Transfer Terms) is made;
- (b) reasonably acceptable to InvLP and the Council (such acceptance not to be unreasonably withheld or delayed);
- (c) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004; and
- (d) certified by the Government Actuary's Department or an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are the same as, broadly comparable to or better than those benefits provided by the LGPS.

1.8.2 the Asset Manager undertakes to InvLP that it shall and shall procure that any relevant Sub-Contractor shall procure that:

- (a) the Eligible Employees shall by three (3) months before the Service Transfer Date or the Cessation Date (as the case may be) be offered membership of the Asset Manager Scheme with effect from and including the Service Transfer Date or Cessation Date (as the case may be);
- (b) the Asset Manager Scheme shall provide benefits in respect of the Eligible Employees' periods of service on and after the Service Transfer Date or Cessation Date (as the case may be) which the Government Actuary's Department or an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department shall certify to be the same as, broadly comparable to or better than the benefits which the Eligible Employees were entitled to under the LGPS at the Service Transfer Date or the Cessation Date (as the case may be);
- (c) if the Asset Manager Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Asset Manager or relevant Sub-Contractor. The replacement scheme must comply with this paragraph 1.8 (Asset Manager Scheme) as if it were the Asset Manager Scheme;
- (d) before the Service Transfer Date or Cessation Date (as the case may be) the trustees of the Asset Manager Scheme shall undertake by deed to the Council and to the Administering Authority that they shall co-operate with the provisions of paragraphs 1.8 (Asset Manager Scheme), 1.10 (Undertaking from the Asset Manager) and Appendix 2 (Bulk Transfer Terms) to the extent applicable to them; and
- (e) where the Asset Manager Scheme has not been established at the Service Transfer Date or Cessation Date (as the case may be), the Eligible Employees shall be provided with benefits in respect of death-in-service which are no less favourable than the death-in-service benefits provided by the LGPS immediately before the Service Transfer Date or Cessation Date (as the case may be). Such benefits will continue to be provided until death-in-service benefits are provided by the Asset Manager Scheme;
- (f) The Asset Manager undertakes to InvLP that within three (3) months of the Service Transfer Date or Cessation Date (as the case may be), the Asset Manager will (and shall procure that any relevant Sub-Contractor shall) offer or procure that there is offered to each Eligible Employee who agrees to become a

member of the Asset Manager's Scheme an invitation to transfer the benefits he had accrued under the LGPS into the Asset Manager's Scheme; and

- 1.8.3 Appendix 2 (Bulk Transfer Terms) shall apply in relation to the terms for bulk transfers from the LGPS to the Asset Manager's Scheme following the Service Transfer Date and any subsequent bulk transfers on termination or expiry of this Agreement.

## 1.9 **Transfer from the LGPS to the Asset Manager's Scheme**

- 1.9.1 InvLP shall procure that the Council shall use reasonable endeavours to ensure that the Administering Authority transfers from the LGPS Fund to the Asset Manager's Scheme an amount in respect of the transferring Eligible Employees' service in the LGPS Fund before the Service Transfer Date or Cessation Date (as the case may be) calculated in accordance with Appendix 2 (Bulk Transfer Terms) and the LGPS Regulations.

- 1.9.2 Payment to the Asset Manager's Scheme of the amount calculated under paragraph 1.9.1 shall only be made on the following conditions:

- (a) the Asset Manager and/or relevant Sub-Contractor has complied with all its obligations; and
- (b) the trustees of the Asset Manager's Scheme have confirmed in writing that:
- (c) a payment should be made in accordance with the LGPS Regulations and that they shall accept payment on the terms set out in this Agreement and in Appendix 2 (Bulk Transfer Terms);
- (d) they shall accept liability for each transferring Eligible Employee's accrued contracted out rights under the LGPS Fund; and
- (e) they shall accept the amount paid in accordance with paragraph 1.9.1 in full and final settlement of all claims against the LGPS Fund in respect of each transferring Eligible Employee.

- 1.9.3 For each Eligible Employee who accepts the invitation to transfer in paragraph 1.8.2 (f) in writing, the Asset Manager shall (and shall procure that each relevant Sub-Contractor shall) ensure that the Asset Manager's Scheme provides such benefits as the Administering Authority's Actuary certifies to be of actuarially equivalent value to the benefits which would have been payable under the LGPS in respect of the Eligible Employee's past service before the Service Transfer Date or the Cessation Date (as the case may be) if he had remained a member of the LGPS.

## 1.10 **Undertaking from the Asset Manager**

The Asset Manager undertakes to InvLP that:

- 1.10.1 all information which InvLP or the Administering Authority or their respective professional advisers may reasonably request from the Asset Manager or any relevant Sub-Contractor for the administration of the LGPS or concerning any other matters raised in paragraph 1.7 (Asset Manager Scheme), paragraph 1.8 or Appendix 2 (Bulk Transfer Terms) shall be supplied to them as expeditiously as possible;
- 1.10.2 it shall not and shall procure that any relevant Sub-Contractor shall not, without the consent in writing of the Council (which shall only be given subject to the payment by the Asset Manager or the relevant Sub-Contractor of such reasonable costs as the Council or the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the LGPS or on the Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;

- 1.10.3 until the Service Transfer Date, it shall not and shall procure that any relevant Sub-Contractor shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in paragraphs 1.1 (Asset Manager to Become an Admission Body) to 1.6 (Asset Manager ceases to be an Admission Body) inclusive without the consent in writing of the Council and the Administering Authority (not to be unreasonably withheld or delayed);
- 1.10.4 it shall not and shall procure that any relevant Sub-Contractor shall not take or omit to take any action which would materially affect the benefits under the LGPS or under the Asset Manager Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Council (not to be unreasonably withheld or delayed) provided that the Asset Manager and/or such Sub-Contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees; and
- 1.10.5 it shall and shall procure that any relevant Sub-Contractor shall offer any of its Eligible Employees who cease to be engaged in the provision of the Services and thereby cease to be eligible for membership of the LGPS membership of the Asset Manager Scheme as soon as reasonably practicable after ceasing to be so engaged.

#### 1.11 **Discretionary Benefits**

- 1.11.1 Where the Asset Manager or a Sub-Contractor is an Admission Body, the Asset Manager shall and/or shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council; and
- 1.11.2 Where the award of benefits in paragraph 1.10.1 is not permitted under the LGPS Regulations and/or the LGPS or the Asset Manager and/or a Sub-Contractor is not an Admission Body, the Asset Manager shall and/or shall procure that any Sub-Contractor shall award benefits to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the LGPS Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.
- 1.11.3 Under paragraph 1.11.1 and 1.11.2, where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Service Transfer Date (which InvLP shall procure that the Council will provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Asset Manager shall and/or shall procure that any relevant Sub-Contractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

#### 1.12 **Claims from Eligible Employees or Trade Unions**

The Asset Manager hereby indemnifies InvLP and/or any future service provider and, in each case, their Sub-Contractors from and against all losses suffered or incurred by it or them which arise from claims by Eligible Employees or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees against InvLP or against the Council which losses:

- 1.12.1 relate to pension rights in respect of periods of employment on and after the Service Transfer Date until the date of termination or expiry of this Agreement; or
- 1.12.2 arise out of the failure of the Asset Manager and/or any relevant Sub-Contractor to comply with the provisions of this paragraph 1 before the date of termination or expiry of this Agreement.

#### 1.13 **Liability for Costs**

The costs of the Council or InvLP necessarily and reasonably incurred in connection with the Partner Admission Agreement and/or of obtaining the necessary certification of comparability in accordance with paragraph 1.8 (Asset Manager Scheme) shall be borne by the Asset Manager.

#### 1.14 **Transfer to another Employer**

Save on expiry or termination of this Agreement, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Asset Manager shall and shall procure that any relevant Sub-Contractor shall:

- 1.14.1 consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and
- 1.14.2 procure that the employer to which the Eligible Employees are transferred (the "**New Employer**") complies with the provisions of this paragraph 1 provided that references to the "Sub-Contractor" will become references to the New Employer, references to "Service Transfer Date" will become references to the date of the transfer to the New Employer and references to "Eligible Employees" will become references to the Eligible Employees so transferred to the New Employer.

#### 1.15 **Pension Issues on Expiry or Termination**

The Asset Manager shall and shall procure that any relevant Sub-Contractor shall:

- 1.15.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Asset Manager or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);
- 1.15.2 promptly provide to InvLP or to the Council such documents and information mentioned in paragraph 1.15.1 which the Council or InvLP may reasonably request in advance of the expiry or termination of this Agreement; and
- 1.15.3 fully co-operate (and procure that the trustees of the Asset Manager's Scheme shall fully co-operate) with the reasonable requests of the Council or InvLP relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Asset Manager or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement.

#### 1.16 **Transfers from Asset Manager's Scheme**

- 1.16.1 The Asset Manager undertakes to InvLP that on:
- 1.16.2 the termination of this Agreement; or
- 1.16.3 the expiry or termination of any sub-contract in the case of a relevant Sub-Contractor; or
- 1.16.4 the employment of any Eligible Employees transferring to a new employer;

the Asset Manager shall (and shall procure that each relevant Sub-Contractor shall) procure that the trustees of the Asset Manager's Scheme offer bulk transfer terms in respect of the relevant Eligible Employees' service in the Asset Manager's Scheme to the pension scheme of InvLP, the Council or any future service provider (or their Sub-Contractors), any new Sub-Contractor or any new employer (as applicable) which are no less favourable (in the opinion of the Administering Authority's Actuary or an actuary appointed by the Council) than the bulk transfer terms set out in Appendix 2 (Bulk Transfer Terms).

#### 1.17 **Compliance with law**

The Asset Manager shall and shall procure that any Sub-Contractor shall, as a minimum, comply in relation to each of its employees engaged in the Services with all applicable requirements in

relation to auto-enrolment and related matters under Chapter 1 of Part 1 of the Pensions Act 2008 and the requirements in relation to pension protection on transfer of employment under TUPE and, if applicable, under sections 257 and 258 of the Pensions Act 2004.

**1.18 Third Party Rights**

InvLP and the Asset Manager or Sub-Contractor agree that the pension provisions contained in this paragraph 2 of Schedule 6 and in Appendix 2 (Bulk Transfer Terms) will be directly enforceable by the Employees against the Asset Manager or any Sub-Contractor (as the case may be) under the Contracts (Rights of Third Parties) Act 1999.

**1.19 Indemnity**

Without prejudice to the generality of this paragraph 1.19 of Schedule 6, the Asset Manager hereby indemnifies InvLP and/or the Council and/or any future service provider and, in each case, their Sub-Contractors on demand from and against all losses suffered or incurred by it or them which arise from any breach by the Asset Manager or any Sub-Contractor of the terms of this paragraph 1.19 of Schedule 6 (howsoever caused and including such losses which arise as a result of a claim by the Council against InvLP).

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**SCHEDULE 7**

**FEE PAYMENT MECHANISM**

(this information is contained in the exempt part of the report)

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**APPENDIX 1**  
**EMPLOYEE SCHEDULE**

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**APPENDIX 2**  
**BULK TRANSFER TERMS**

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