

THE
INVESTMENT
ASSOCIATION

NORTON ROSE FULBRIGHT

MODEL DISCRETIONARY INVESTMENT MANAGEMENT AGREEMENT

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The Investment Association

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This Agreement contains proposed wording for allocation of risk between the parties – such as the standard of care that may be appropriate and on VAT. It should be emphasised that it is up to the parties to decide how such risks should be allocated as between them and it may be appropriate for changes to be made to the provisions to reflect particular circumstances or facts.

This Agreement does not contain any provisions dealing with the possible impact of the Criminal Finances Act 2017; the parties should consider whether any are appropriate.

Where relevant, footnotes have been provided to assist you with understanding certain regulatory and general legal updates made to the Model IMA since the last published version, but should not be viewed as a substitute for consulting the underlying rules and regulations.

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THIS AGREEMENT is dated as of [•] day of [•], 20[•]

BETWEEN

- (1) [•] a company incorporated under the laws of England and Wales with registered number [•] whose registered office is at [•] (the “**Manager**”); and
- (2) [•] a company incorporated under the laws of [•] with registered number [•] whose registered office is at [•] (the “**Client**”),

each a “**Party**” and together the “**Parties**”.

WHEREAS

- (1) The Client wishes to appoint the Manager as a discretionary investment manager of the Portfolio (as defined below) and the Manager agrees to such appointment on the terms and subject to the conditions of this Agreement.
- (2) [The Client is the [sole] trustee of the occupational pension scheme known as “[name]” constituted under a trust deed and rules between [•] and [•] dated [•] (the “**Scheme**”) and is entering into this Agreement in its capacity as trustee of the Scheme.]¹

THE PARTIES AGREE THAT:

1. Definitions

In this Agreement the following words and expressions shall have the following meanings:

“**Affiliate**” means, in relation to the Manager, any entity controlled, directly or indirectly, by the Manager, any entity that controls, directly or indirectly, the Manager or an entity directly or indirectly under the common control with the Manager;

“**Authorised Person**” means a person whose name, details and signature appears in Schedule 1, as amended by the Client from time to time by giving notice to the Manager in accordance with Clause 33, and who is authorised to give Instructions on behalf of the Client;

“**Business Day**” means a day on which commercial banks are generally open for business (including dealings in foreign exchange and foreign currency deposits) in London;

“**Cessation of Investment Management Service Date**” means [5pm local time in London on the first following day that is a Business Day after the Termination Notice Date OR such time after the Termination Notice Date as may be agreed with the Client];

“**Client Limit Order**” means a specific instruction from the Client to the Manager to buy or sell assets at a specified price limit or better price and for a specified size;²

“**Confidential Information**” means all information or material communicated between the Parties, including the terms of this Agreement, provided that Confidential Information shall exclude information or material which at the time of its disclosure is, or which thereafter becomes (in each case otherwise than as a result of any act or default by the recipient), part of the public domain by publication or otherwise;

¹ For pension scheme Clients only. Amendment ensures that, where the Client is a pension scheme trustee, it enters into the Agreement in that capacity alone.

² Deletion of definition of “Commission Sharing Arrangement” is a mandatory MiFID II inducements change.

“**Conflicts of Interest Policy**” means the policy of the Manager relating to the identification of conflicts of interest that arise, or may arise, when providing services and whose existence may damage the interests of clients and that specifies procedures in order to prevent or manage such conflicts as required by the FCA Rules and as amended by the Manager from time to time;³

“**Counterparty(ies)**” means any entity which effects a transaction, executes orders or passes or places orders for execution and includes brokers, dealers, market makers, executing brokers and clearing brokers (whether acting as principal or agent);

“**Custodian**” means the person from time to time appointed by the Client to provide custody services in relation to all or part of the Portfolio;⁴

“**Data Protection Laws**” means all applicable statutes and regulations in any jurisdiction pertaining to the processing of personal data, including the privacy and security of personal data;

“**Delegate**” means any person (whether or not an Affiliate of the Manager) appointed by the Manager to perform the Investment Management Service or any part of it and any other services in respect of which the Manager is appointed pursuant to Clause 5.1(b) but excluding any Counterparties or the Custodian;⁵

“**Effective Date**” means the date specified on the first page of this Agreement;

“**FoIA**” means the Freedom of Information Act 2000;

“**Force Majeure**” means any event preventing either of the Parties from performing any or all of its obligations under this Agreement which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Party so prevented, including, without limitation, nationalisation, expropriation or other governmental actions; any change of law or regulation, any law, order or regulation of a governmental, supranational or regulatory body, regulation of the banking or securities industry (including changes in market rules), postal or other strikes, lock-outs or other industrial disputes (whether involving the workforce of the Party so prevented or of any other party), act of terrorism or of God, fire, flood, storm, war, riot, civil commotion, malicious damage (including to systems), failure or breakdown in communications, computer facilities or software and the failure of any relevant exchange, clearing house, settlement system or Counterparty for any reason to perform its obligations;⁶

“**FCA**” means the Financial Conduct Authority of the United Kingdom, its successors or assigns;

“**FCA Rules**” means the rules and guidance contained in the Handbook issued by the FCA;

“**FSMA**” means the Financial Services and Markets Act 2000;

“**Guidelines**” means the investment policy, objectives and restrictions set out in Schedule 2;

“**HMRC**” means Her Majesty’s Revenue & Customs;

“**Indemnified Persons**” means the indemnified persons identified at Clause 23 other than the Manager;

“**In-House Funds**” means collective investment schemes or investment companies including investment trusts or unit linked funds managed by the Manager or an Affiliate, life policies issued by the Manager or an Affiliate or any other arrangement the Parties agree in the Guidelines to treat as an In-House Fund;

³ Elective MiFID II clarificatory amendments.

⁴ Deletion of “Dealing Arrangements” definition reflects mandatory MiFID II inducements changes.

⁵ Replaces the definition of “Investment Management Affiliate Delegate” and expands it to include non-Affiliates and persons performing any other services agreed under Clause 5.1(b).

⁶ Modernisation amendments.

“Insolvency Event” means the occurrence, in respect of either Party, of any of the following events:

- a) it enters into a composition or arrangement or convenes a meeting of its creditors;
- b) a receiver, administrative receiver or a liquidator is appointed;
- c) an order is made or resolution passed for its administration or winding-up;
- d) it ceases or threatens to cease to carry on business or suspends or threatens to suspend payment of any of its debts or is deemed by statutory provision to be unable to pay its debts as and when they fall due;
- e) it makes a voluntary arrangement or composition with or for the benefit of its creditors; or
- f) it allows, permits or does anything analogous to, any of the foregoing events under applicable law;

“Instructions” means instructions (including standing instructions) in writing, or in such other form as may be set out in Schedule 1, in respect of any of the matters referred to in this Agreement received from or on behalf of the Client by the Manager;

“Investment Advice” means the provision of personal recommendations to the Client, either upon its request or at the initiative of the Manager, in respect of one or more transactions relating to particular financial instruments;⁷

“Investment Management Service” means the service set out in Clause 5.1(a);^{8,9}

[**“LCIA Rules”** means the London Court of International Arbitration Rules as amended from time to time;]¹⁰

“Legal Entity Identifier” means the code made up of 20 alphanumeric digits which is used to uniquely identify every legal entity or structure, in any jurisdiction, that is party to a financial transaction;¹¹

“Litigation” means any proceedings or potential proceedings (including without limitation insolvency proceedings, securities litigation and arbitration) relating to assets held from time to time within the Portfolio and to which the Manager or a Delegate is not a party in respect of that Portfolio;¹²

“Losses” includes losses, damages, costs, claims, liabilities, charges, demands and expenses;¹³

“MiFID” means Directive 2014/65/EU on markets in financial instruments, Regulation (EU) No 600/2014 on markets in financial instruments, and any secondary legislation, rules, regulations and procedures made pursuant thereto;¹⁴

“Order Execution Policy” means the policy of the Manager relating to the execution of orders and decisions to deal on behalf of clients as required by the FCA Rules and as amended by the Manager from time to time;

“Performance Commencement Date” means the date specified as such in the Guidelines;

“Personal Data” means any information relating to an identified or identifiable natural living person;¹⁵

“Portfolio” means the portfolio of assets of the Client, including uninvested cash, designated from time to time by the Client as subject to the management of the Manager pursuant to this Agreement;

⁷ Amendments to modernise terminology and define parameters of investment advice.

⁸ “Investment Management Affiliate Delegate” definition replaced with amended definition of “Delegate”.

⁹ Deletion of “Level One Disclosure” definition. Not used and old terminology.

¹⁰ Delete if opting for resolution through the courts.

¹¹ Elective MiFID II amendment relevant in the context of transaction and position limit reporting.

¹² Simplification of drafting and clarification that the Manager must not be a party to the Litigation. If it were, its interest cannot be assumed to be aligned with those of the Client.

¹³ Clarificatory amendment.

¹⁴ Mandatory MiFID II amendment for the purposes of Clauses 10.7, 12.9 and 18.2.

¹⁵ Mandatory amendment for the purposes of Clause 30.

“**Portfolio Management**” means portfolio management within the meaning of the FCA Rules;¹⁶

[“**Proceedings**” means any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement including any dispute relating to any non-contractual obligations arising out of or in connection with this Agreement;]¹⁷

“**Regulated Market**” means a regulated market within the meaning of the FCA Rules;¹⁸

“**Regulated Trading Venue**” means a trading venue within the meaning of the FCA Rules;¹⁹

“**Standard of Care**” means, in relation to the Manager, the standard of care that could reasonably be expected of a professional discretionary investment manager acting in good faith and with reasonable care and skill;

[“**Statement of Investment Principles**” means the written statement of the principles governing decisions about investments in relation to the Scheme adopted from time to time for the purposes of section 35 of the Pensions Act 1995 or the investment strategy statement for the purposes of Regulation 7 of the Local Governmental Pension Scheme (Management and Investment of Funds) Regulation 2016;]²⁰

“**Termination Date**” means the date determined in accordance with Clauses 28.2, 28.3 or 28.4;

“**Termination Event**” means the occurrence at any time with respect to either Party of any of the following events:

- a) it is required by applicable law or by any competent authority to terminate this Agreement;
- b) it is subject to an Insolvency Event;
- c) it is in material breach of this Agreement and (if remediable) has failed to make good such breach within 20 calendar days of receipt of written notice from the other Party requiring it to do so;
- d) it is affected by Force Majeure which persists for 20 calendar days; or
- e) it ceases to have the necessary regulatory authorisation or permission to carry on its business under this Agreement;

“**Termination Notice Date**” means the date upon which the notice of termination given by the Client pursuant to Clause 28.4 is deemed effective in accordance with the provisions of Clause 33;

[“**Third Party Research Policy**” means the policy of the Manager relating to the use of third party research as required by the FCA Rules and as amended by the Manager from time to time”];²¹

“**Trigger Event**” means any change of law, in interpretation on the basis of case law accepted by HMRC, or in the practice of HMRC, in each case which results, in the Manager’s reasonable opinion, in a change in the requirement to charge VAT on the services, whether in the past or in future;

“**VAT**” means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature; and²²

[“**Work-out**” means a debt restructuring or any similar arrangement relating to a debt instrument held from time to time within the Portfolio or to the issuer of such debt instrument.]²³

¹⁶ Allows for simplification of drafting in Clause 5.1(a) and cross-references an industry standard definition.

¹⁷ Delete if opting for resolution by arbitration.

¹⁸ MiFID I update.

¹⁹ Elective MiFID II amendment relevant in the context of client limit orders and trading outside a trading venue.

²⁰ For pension scheme Clients only.

²¹ Mandatory MiFID II amendments where the manager uses a research payment account.

²² Insertion of “Trigger Event” and “VAT” definitions required as a result of tax updates to Clause 12.

²³ Clarificatory amendment to make the language consistent with that in the definition of “Litigation”. Delete if Clause 27 is not relevant.

In this Agreement:

- a) any other words or phrases used which are defined in the FCA Rules shall have the same meanings in this Agreement unless the context requires otherwise;
- b) references to statutory provisions, regulations, notices or the FCA Rules shall include those provisions, regulations, notices or rules as amended, extended, consolidated, substituted or re-enacted from time to time;
- c) references to legislation, Acts of Parliament or other statutory provisions are, for the avoidance of doubt, references to United Kingdom legislation, Acts of Parliament and statutes;
- d) words in headings are for information only and shall not affect the construction of this Agreement;
- e) references to “person” shall be construed as including any natural or legal person;²⁴
- f) any words following the terms “including”, “include”, “in particular”, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;²⁵ and
- g) references to the singular include the plural and vice versa.

2. Appointment

[In accordance with section 34 of the Pensions Act 1995, the]²⁶/ [T]he Client appoints the Manager as discretionary investment manager of the Portfolio to provide services in accordance with this Agreement. The Manager accepts such appointment.

3. Effective Date and the Performance Commencement Date

3.1. This Agreement shall come into full force and effect on the Effective Date.

3.2. The Client agrees that:

- a) the measurement of the performance of the Portfolio shall be undertaken from the Performance Commencement Date;
- b) the Guidelines shall apply from the Performance Commencement Date unless the Parties agree otherwise; and
- c) in the event that the Manager, in accordance with an Instruction, undertakes transactions in the Portfolio following the Effective Date but prior to the physical settlement of assets in the Portfolio into the relevant accounts of the Client to which the Manager has access, the Client shall indemnify the Manager against any Losses that may be incurred in the event of delay or failure to complete such settlement.

²⁴ Clarifactory amendment.

²⁵ Clarifactory amendments.

²⁶ For pension scheme Clients only. Pension scheme trustees are required to formally appoint entities managing scheme assets in accordance with the Pensions Act 1995, which requires trustees to be comfortable that the manager is appropriately qualified, experienced, etc.

4. Client categorisation

- 4.1. For the purposes of the FCA Rules and based on information obtained in respect of the Client, the Manager has categorised the Client as a professional client in relation to the services provided under this Agreement. It is the Client's sole responsibility to keep the Manager informed about any change to the Client's circumstances which could affect the Manager's categorisation of the Client as a professional client.
- 4.2. The Client acknowledges that it may request that the Manager considers its re-categorisation as a retail client but it is not the Manager's policy to accept requests to be treated as a retail client for any service under this Agreement.²⁷

5. The Investment Management Service and other services

- 5.1. The Manager shall provide:
- a) the service of Portfolio Management in accordance with the terms of this Agreement; and
 - b) any other services that the Manager is appointed by the Client to provide under the terms of this Agreement.
- 5.2. Subject to any Instructions, applicable law and any other provisions of this Agreement, the Manager shall have full authority at its sole discretion, without prior reference to the Client, as agent and in the name of the Client and at such times as the Manager shall think fit, to make decisions to invest the assets comprising the Portfolio in accordance with the Guidelines, and to take such other steps including, without limitation:
- a) to buy, sell, exchange, redeem, hold, convert or otherwise deal with assets of any nature;
 - b) to subscribe to issues and apply for offers for sale and accept placings;
 - c) to enter into underwritings and sub-underwritings of any investments;
 - d) to provide any undertaking in relation to offers, placings or rights conferred by a particular investment;
 - e) to effect transactions in regulated or unregulated collective investment schemes, investor companies, investment trusts, unit linked funds or life policies including In-House Funds;
 - f) to exercise or refrain from exercising any right conferred by a particular investment to buy, sell, subscribe for, exchange or redeem an investment;
 - g) to exercise any governance or ownership right conferred by a particular investment;
 - h) to make call or term deposits;
 - i) to enter into foreign exchange transactions;
 - j) to enter into any derivative transactions; and
 - k) generally, to enter into any kind of transaction or arrangement.

For the avoidance of doubt, the Investment Management Service shall not constitute Investment Advice. However, the Manager may provide investment research and financial analysis and other general information.

²⁷ Elective MiFID I amendments to clarify pre-existing rights and obligations of the Client in relation to categorisation.

-
- 5.3. Without limiting the generality of Clause 5.2 above, subject to the Guidelines, any Instructions and any other provisions of this Agreement, the Client authorises the Manager:
- a) to select and use such Counterparties or trading venues (including, where permitted under applicable law, Affiliates of the Manager) to effect transactions on behalf of the Client;
 - b) to give instructions for the opening of accounts in the name of the Client and the operation of such accounts;
 - c) to negotiate, amend, execute, sign, deliver or otherwise bring into effect all such agreements, master agreements, confirmations, account opening documents, contracts, deeds, other instruments, notifications, warranties, undertakings, representations and indemnities in the name of, binding against, and on behalf of the Client;
 - d) to give instructions to the Custodian to transfer cash or securities held by the Custodian on behalf of the Client in connection with the settlement of transactions; and
 - e) to take any other action (including, without limitation, day-to-day decisions) which the Manager reasonably considers to be necessary, desirable or incidental to carry out the services under this Agreement.
- 5.4. Based on information provided by the Client, in providing the Investment Management Service, the Manager shall be responsible for assessing the suitability of investments and the Portfolio for the Client as required by the FCA Rules. The reason for assessing suitability is to enable the Manager to act in the Client's best interest. As the Client is a professional client, the Manager is entitled to assume that the Client has the necessary level of experience and knowledge in order to understand the risks involved in the relevant transaction or in the management of the Portfolio. The Client shall be responsible for ensuring that information provided to the Manager is kept accurate, complete and up to date so as to enable the Manager to assess suitability for the Client.²⁸

6. Standard of Care

The Manager shall perform its obligations under this Agreement in accordance with the Standard of Care.

²⁸ Mandatory MiFID II amendment to reflect the requirements for assessing suitability under Article 54 of the Delegated Regulation.

7. The Guidelines

- 7.1. The Guidelines shall not be breached as a result of any events or circumstances outside the reasonable control of the Manager including, but not limited to, changes in the price or value of the assets in the Portfolio brought about solely through movements in the market, the reduction in and/or lack of availability of assets which were envisaged to be in the Portfolio, an inflow to or outflow from the Portfolio or breaches arising during an agreed transition period following an amendment of the Guidelines or a benchmark or caused by following an Instruction of the Client.
- 7.2. Unless specified in the Guidelines, an investment's compliance with the Guidelines shall be determined as at the date of purchase and the Guidelines shall not be deemed breached as a result of changes in the value or status (including the credit rating) of an investment following purchase.
- 7.3. In the event that the Guidelines are breached or would have been breached but for the provisions of Clauses 7.1 or 7.2 above, the Manager shall notify the Client of the relevant circumstances as soon as reasonably practicable. Subject to Clause 10.2, the Manager shall use its reasonable endeavours to address such breach of the Guidelines as soon as reasonably practicable.
- 7.4. Notwithstanding any other provision in this Agreement, no warranty, assurance or undertaking is given by the Manager as to the performance, returns, increase in or retention of value or profitability of the Portfolio (or any part of it) or that the investment objectives or targets in the Guidelines shall be successfully achieved, whether in whole or in part.

8. Delegation and use of third parties²⁹

- 8.1. Except as otherwise provided in the Guidelines in relation to the Investment Management Service:
 - a) the Client hereby consents to the Manager appointing or retaining any person which is an Affiliate of the Manager to perform any aspect of the Investment Management Service that amounts to investment decision-making in respect of the Portfolio;
 - b) the Manager may, with the prior written consent of the Client, appoint or retain any person which is not an Affiliate of the Manager to perform any aspect of the Investment Management Service that amounts to investment decision-making in respect of the Portfolio;³⁰ and
 - c) the Manager may appoint or retain any person (whether an Affiliate or non-Affiliate) to perform any other aspect of the Investment Management Service that does not amount to investment decision-making without prior reference to the Client.³¹
- 8.2. In relation to any services provided under this Agreement in accordance with Clause 5.1(b), subject to any specific provisions in the Guidelines, the Manager and any persons appointed or retained pursuant to Clause 8.1 shall, without prior reference to the Client, be entitled to appoint or retain persons (including any Affiliate of the Manager) to perform any such services.³²
- 8.3. Unless otherwise agreed with the Client and subject to Clause 12.2, the Manager shall be responsible for the fees and charges of any person appointed or retained under this Clause 8.

²⁹ Amendments to make the delegation authorisations clearer and more workable.

³⁰ Managers with a multi-manager strategy may need to consider whether this position is workable.

³¹ Note that, although notice to the Client is not required here, the Manager retains liability.

³² Given the Manager retains liability for service providers under this Clause, reference to the Standard of Care has been removed.

9. Dealing and use of Counterparties

- 9.1. Subject to the Guidelines and the Order Execution Policy, where applicable, the Manager may effect transactions with such Counterparties and on such trading venues or facilities as it considers appropriate in accordance with the Standard of Care. Where applicable, all transactions shall be effected in accordance with the rules and regulations (if any) of the relevant market or exchange and the Manager may take all such steps as may be required or permitted by such rules and regulations and by appropriate market practice.
- 9.2. The Manager shall select and use Counterparties, trading venues or facilities pursuant to this Clause 9 in accordance with the Standard of Care (unless instructed by the Client to select and use a specific Counterparty, trading venue or facility in which case the Manager shall have no responsibility for the selection or use of such Counterparty, trading venue or facility).
- 9.3. If any Counterparty fails to deliver any necessary documents or to complete any transaction, the Manager shall take reasonable steps on behalf of the Client to rectify such failure or to obtain compensation in lieu thereof provided that such steps do not constitute Litigation in which case the provisions of Clause 26 shall apply. All resulting reasonable costs and expenses properly incurred by the Manager shall be paid by the Client.³³
- 9.4. The Manager shall not be responsible for ensuring that the Client complies with any position limit that the FCA might apply to any commodity derivatives held in the Portfolio. It is the Client's responsibility to monitor its positions and those of other members of its group against any applicable limits and to instruct the Manager to reduce its holding in any investment as a result.
- 9.5. The Client acknowledges that the Manager, when dealing on behalf of the Client with certain Counterparties, may be required to act in accordance with certain requirements, including any relevant rules and regulations of such Counterparties, and accepts any Losses that may result from the Manager so acting.³⁴

³³ Amendments to Clauses 9.1 – 9.3 are clarificatory or for modernisation purposes.

³⁴ Elective MiFID II amendments to Clauses 9.4 and 9.5 to reflect the position limits regime.

10. Order execution³⁵

- 10.1. The Client hereby confirms that it consents to the Order Execution Policy. In particular, the Client agrees that [, subject to its obligations under the Pensions Act 1995 and underlying regulations,]³⁶ the Manager may trade outside of a Regulated Trading Venue.³⁷
- 10.2. Subject to Clause 10.3, the Manager will at all times comply with its Order Execution Policy and in particular will act in the best interests of the Client.
- 10.3. The Client acknowledges that specific Instructions in relation to the execution of orders may prevent the Manager from following its Order Execution Policy.³⁸
- 10.4. The Client instructs the Manager not to make public Client Limit Orders in respect of shares admitted to trading on a Regulated Market or traded on a Regulated Trading Venue which are not immediately executed under prevailing market conditions.³⁹
- 10.5. The Manager may aggregate orders on behalf of the Client with those of its other clients and clients of its Affiliates. The Manager will allocate such orders on a fair and reasonable basis in accordance with the requirements of the FCA Rules. The Client acknowledges and agrees that aggregation may operate to the advantage or disadvantage of the Client.
- 10.6. Where a transaction is effected in breach of the Guidelines or is otherwise prohibited under this Agreement, subject to Clause 10.2, the Manager or one of its Affiliates may act as principal in executing a transaction with the Portfolio to correct the error.
- 10.7. The Client acknowledges that certain of its transactions may be subject to the provisions of MiFID, which applies certain transaction and position reporting obligations directly on the Client in respect of the assets in the Portfolio, including, but without limitation, the procurement of a valid Legal Entity Identifier. The Client undertakes to provide in a timely fashion all such information (including, but not limited to, the Client's Legal Entity Identifier) and documentation and to promptly take all such action as the Manager may from time to time reasonably require in relation to the MiFID transaction and position reporting obligations.⁴⁰
- 10.8. The Client acknowledges that certain information about transactions the Manager wishes to and does enter into on the Client's behalf may be made public and that the Manager will be required to report the details of certain transactions to the FCA, in some cases, via third parties, in accordance with applicable law.⁴¹

³⁵ Deletion of "Dealing Arrangements" Clause reflects MiFID II inducements changes.

³⁶ For pension scheme Clients only. There are specific requirements on pension scheme trustees to invest predominately in regulated markets.

³⁷ Elective MiFID II amendment to capture organised trading facilities (within the meaning of Article 4(1)(23) of MiFID II).

³⁸ MiFID I amendment.

³⁹ Mandatory MiFID II amendment if the Manager wishes to obtain an express instruction from the Client not to make Client Limit Orders public for shares traded on a trading venue. N/A to the extent the Manager does not accept Client orders.

⁴⁰ Mandatory MiFID II amendment where the Manager agrees to facilitate transaction reporting.

⁴¹ Mandatory MiFID II amendment where the Manager agrees to facilitate transaction reporting.

11. Research

The Manager may receive research material or services in return for [direct payments by the Manager out of its own resources.] [OR] [payments from a separate research payment account controlled by the Manager in accordance with the FCA Rules. Details of any research charge as budgeted by the Manager and the frequency with which the specific research charge will be deducted from the resources of the Client over the year have been separately notified to the Client together with the Third Party Research Policy. The Client agrees to the research charge as budgeted and the frequency with which the specific research charge may be deducted from its resources. The Manager shall notify the Client in advance of any intended increase in its research budget. The Client acknowledges that the research charge is an amount of money owed to the Manager that will be collected only when it becomes due and payable and accordingly will not be “client money” for the purposes of the FCA Rules.]⁴²

12. Fees, costs and charges

- 12.1 The Client shall pay the Manager the fees as set out in Schedule 3. The fees shall accrue from the Effective Date unless the Parties agree otherwise.
- 12.2 In addition to the Manager’s fees, the Client will be liable for:
- a) any costs payable and properly incurred under this Agreement, including all reasonable expenses, liabilities, charges [(including any research charge agreed with the Client)]⁴³ and costs including but not limited to any brokerage charges, commissions, transfer fees, registration fees, exchange fees, settlement fees, and stamp duty, tax or other fiscal liabilities or any other transaction related expenses and fees arising out of transactions in the Portfolio incurred by the Manager, its Delegates or persons appointed or retained in accordance with Clause 8 in performing the services under this Agreement;
 - b) any costs and expenses payable to bond trustees [or legal charges associated with Work-outs] in connection with assets in the Portfolio;
 - c) any costs and expenses associated with assistance with Litigation in connection with assets in the Portfolio in accordance with Clause 26; and
 - d) any costs related to the termination of this Agreement payable in accordance with Clause 28.
- 12.3 The fees set out in Schedule 3 are exclusive of any VAT or similar taxes which, if payable, shall be payable in addition by the Client at the same time as the fees, and after the provision of the Manager’s fee invoice.
- 12.4 If, at any time, as a result of a Trigger Event, it appears in the reasonable opinion of the Manager that the requirement to charge VAT on the services has changed then the Manager shall, from the date of the Trigger Event, amend the amounts invoiced thereafter in respect of VAT on the services accordingly.
- 12.5 If, as a result of a Trigger Event, it appears, in the reasonable opinion of the Manager, that any amount paid by the Client to the Manager in respect of VAT on the services has been paid in error, then:
- a) if and to the extent that the Manager is not already obliged to account for such VAT to HMRC, the Manager shall promptly repay such amount to the Client;

⁴² Delete as appropriate. Mandatory MiFID II amendment to reflect the requirement under COBS 2.3B.5(1)R to provide clients with information about the budgeted amount for research and the amount of the estimated research charge before the provision of the investment service.

⁴³ Mandatory MiFID II amendment where the Manager uses a research payment account model.

- b) if and to the extent that the Manager has already so accounted for such VAT to HMRC:
- i the Manager shall promptly make a claim (the “Claim”) to HMRC for the amount of such VAT; and
 - ii after HMRC has credited to the Manager the amount specified in the Claim or part thereof, the Manager shall promptly reimburse to the Client such amount (where applicable, in accordance with the provisions of Part VA of the VAT Regulations 1995),

provided always that the Manager shall not be required to reimburse to the Client any amount in excess of any final net amount with which it has been credited by HMRC in respect of the services (as reasonably determined by the Manager) taking into account any irrecoverable VAT suffered by the Manager regardless of when that VAT is suffered.

- 12.6 The payment by the Manager to the Client of the amount received from HMRC in accordance with Clause 12.5 shall be in full and final settlement of all claims arising as a result of the Trigger Event.
- 12.7 The Parties acknowledge and agree that the Manager’s fees are based on the current understanding of the VAT treatment of the fees. In the event of any change in the VAT treatment of the fees, both Parties reserve the right to negotiate a change in the fee basis (exclusive of VAT) to reflect the revised circumstances.⁴⁴
- 12.8 Any fees for the provision of custodial services in relation to the Portfolio and any banking charges in relation to the Portfolio shall be charged separately by the Custodian or bank and shall not be included in the fees set out in Schedule 3 (unless otherwise stated in Schedule 3).
- 12.9 The Manager shall separately provide information on costs and associated charges to the Client including all information required by MiFID to be provided in such disclosures.⁴⁵

⁴⁴ Amendments to Clauses 12.3 – 12.7 are for VAT purposes.

⁴⁵ Elective MiFID II amendment to reflect the costs and charges disclosure requirements.

13. Custody of assets

- 13.1. The Manager shall not provide custody services to the Client.
- 13.2. All assets forming part of the Portfolio shall be held by either the Client or the Custodian pursuant to a separate agreement. The Manager shall at no time hold any assets belonging to the Client. The Client acknowledges that it has been and will be solely responsible for the selection, appointment, monitoring and supervision of the Custodian and for any services the Custodian provides to the Client including, without limitation, cash management services, stocklending and repo services and foreign exchange services.
- 13.3. The Client shall instruct the Custodian to:
- a) act in accordance with instructions from the Manager pursuant to this Agreement;
 - b) provide the Manager with copies of periodic statements and access to electronic systems;
 - c) give the Manager (and/or such person as the Manager may direct)⁴⁶ timely notice of any voting or other rights with respect to assets forming part of the Portfolio as soon as possible upon becoming aware of any such rights;
 - d) inform the Manager as soon as practicable of any additions or other credits and withdrawals or other debits to any account containing assets forming part of the Portfolio;
 - e) pay the amount of any fees, costs and expenses payable under this Agreement from the Portfolio in accordance with the payment instructions notified by the Manager to the Custodian; and
 - f) comply with the directions of the Manager under Clause 28.6(f).
- 13.4. For the avoidance of doubt, the Custodian shall hold the official books and records of the Portfolio and the Manager is not engaged to provide such official books and records nor to be responsible for any reconciliation of assets in relation to the Portfolio.
- 13.5. The Client shall not change its Custodian without giving the Manager reasonable prior written notice of its intention to do so together with the name and other relevant information which the Manager may require in respect of the new Custodian.
- 13.6. Where the Manager elects to exercise or procure the exercise of voting rights or other rights, it does so exclusively on the basis of the records and positions held by the Custodian and the Client acknowledges that the Manager shall be entitled to rely on the information supplied by any other person acting for the Custodian or appointed by the Client and shall not be required to investigate or reconcile any discrepancies between the information held by it and the information held by the Custodian.

14. Cash

The Client shall remain solely responsible for the selection and use of any credit institution or other entity with which cash is deposited, unless and to the extent that the Manager shall have exercised its discretion in the selection of such credit institution or other entity.

⁴⁶ Modernisation change to reflect that the Manager may use a third party voting agent.

15. Borrowing

- 15.1. Unless permitted in the Guidelines and save as provided in this Clause 15, the Manager may not commit the Client to any borrowing.
- 15.2. Subject to any restrictions in the Guidelines, the Client acknowledges and accepts that the Manager may undertake borrowing in respect of the Portfolio, including temporary overdrafts on the bank or cash accounts operated by the Client, for short-term liquidity management purposes, to settle a mismatched, delayed or failed transaction or for other unforeseen circumstances consistent with the efficient management of the Portfolio in accordance with the Guidelines.
- 15.3. The Client shall be liable for all fees, costs and expenses which may arise out of any such properly incurred borrowing or overdrafts including any applicable interest charged provided that where an Affiliate of the Manager extends a loan to the Client in such circumstances it is expected that the rate of interest charged shall be at an arm's length commercial rate.

16. Derivatives

Any transactions in derivatives permitted by the Guidelines shall be subject to the provisions of Schedule 4.

17. Stocklending and repos

- 17.1 Unless otherwise agreed in the Guidelines, the Manager shall not undertake any stock lending, stock borrowing, repurchase or reverse repurchase arrangements in relation to assets in the Portfolio.
- 17.2 Where the Client has entered into a securities lending programme with the Custodian or another third party, it shall procure that such Custodian or third party ensures that sufficient securities are available for the account of the Client to satisfy any settlement obligations created by transactions entered into by the Manager for the Portfolio in accordance with the Guidelines as well as to comply with applicable law (including applicable requirements on short sales) in connection with such securities lending transactions.

18. Records, valuations, confirmations and periodic statements

- 18.1. The Manager will keep or cause to be kept records of investments, sales, disbursements and other transactions carried out by the Manager on behalf of the Client under this Agreement in accordance with applicable law.
- 18.2. The Manager shall provide periodic statements setting out certain details in relation to the activities undertaken and of the performance of the Portfolio during the reporting period. The periodic statement shall include all information required by MiFID to be provided in such statements, including a statement of the contents and the valuation of the Portfolio, on a periodic basis which shall be [quarterly or monthly] or such other frequency permitted by applicable regulation and agreed with the Client.⁴⁷
- 18.3. The basis of all valuations will be as stated in the first periodic statement⁴⁸ unless otherwise notified.
- 18.4. Without prejudice to Clause 13.4, the Manager will maintain its own records of the Portfolio and transactions relating to the Portfolio to enable it to assess at any date, without undue delay, their nature and value. The Client acknowledges that valuation levels for the assets of the Portfolio in the periodic statements provided by the Manager in respect of the Portfolio shall reflect the Manager's good faith effort to ascertain fair market levels (including accrued income, if any) for the assets reasonably believed by the Manager to be held for the Portfolio based on pricing and valuation information believed by the Manager to be reliable.
- 18.5. The Manager may rely on an external data provider to supply information or data of any kind. The Manager accepts no responsibility whatsoever (whether in contract, tort or otherwise, except to the extent that any such responsibility cannot be excluded by law) for Losses to the Client incurred as a consequence of the external data provider supplying inaccurate information or data.⁴⁹
- 18.6. The Client acknowledges that variations in market conditions will mean that the prices shown in periodic statements and any other reports do not necessarily reflect realisable values.
- 18.7. The Manager will give the Client and its auditors all reasonable opportunity, during the usual business hours of any Business Day on reasonable notice, to examine such part of the books and records (or an extract) of the Manager that relate directly to the Portfolio.
- 18.8. Unless otherwise agreed, the Manager will not provide information about executed transactions on a transaction-by-transaction basis.

⁴⁷ "Monthly" would apply where the Client has authorised a leveraged Portfolio (see Article 60, Commission Delegated Regulation (EU) of 24.4.2016 supplementing Directive 2014/65/EU as regards organisational requirements and operating conditions for investment firms (**Delegated Regulation**)).

⁴⁸ Information on the method and frequency of valuations of the investments in the Portfolio to be provided in good time before the provision of investment services under this Agreement (see Article 47(3)(a), Delegated Regulation).

⁴⁹ Clarification of Manager's liability in relation to external data providers.

19. Voting

- 19.1. Unless the Client instructs the Manager to the contrary in writing, the Manager is authorised to issue proxy voting instructions or to vote on a show of hands at a meeting in relation to any relevant assets held or that were held in the Portfolio, and to execute and bind the Client in actions (including corporate actions)⁵⁰, waivers, consents, covenants and indemnifications related to such voting proxies.
- 19.2. The Client acknowledges and agrees that the Manager:
- a) may establish guidelines for the exercise of voting of proxies or other rights and may employ the services of a proxy voting service to exercise proxies in accordance with the Manager's guidelines;
 - b) may be precluded by regulation from exercising or procuring the exercise of any voting rights attaching to the Portfolio's holdings of In-House Funds;
 - c) may, in its discretion, elect not to exercise or procure the exercise of any voting or other rights and, except as may be explicitly provided by applicable law, the Manager shall not incur any liability to the Client by reason of any exercise of, or failure to exercise, any such discretion and shall not incur any liability for any failure arising from an act or omission of a person other than the Manager; and
 - d) may not be able to verify if the Custodian or any proxy voting agent has received and acted upon its voting instructions and may not be able to audit the onward transmission of those instructions to any party.

20. Conflicts of interest

- 20.1. The Manager and any Affiliate may effect transactions in which the Manager, any Affiliate, another client of the Manager or of an Affiliate has, directly or indirectly, a material interest or a relationship of any description with another party, which involves or may involve a potential conflict with the Manager's duty to the Client. The Manager will ensure that such transactions are effected on terms which are not materially less favourable to the Client than if the conflict or potential conflict had not existed. Any conflicts which the Manager is not able to prevent or manage effectively shall be promptly disclosed by the Manager to the Client. Except as required by the FCA Rules, neither the Manager nor any Affiliate shall be liable to account to the Client for any profit, commission or remuneration made or received from or by reason of such transactions or any connected transactions or to disclose the same or the identity of any other client or counterparty involved in such transactions, nor will the Manager's fees, unless otherwise provided, be abated.
- 20.2. The Conflicts of Interest Policy sets out the types of actual or potential conflicts of interest which affect the Manager's business and provides details of how these are identified, prevented or managed. A summary of the Conflicts of Interest Policy has been separately notified to the Client. Further details of the Conflicts of Interest Policy are available to the Client on request.⁵¹

⁵⁰ Clarificatory amendment.

⁵¹ Mandatory MiFID II amendments in Clauses 20.1 and 20.2.

- 20.3. The Manager will act as the agent of the Client and the Client will therefore be bound by the actions of the Manager taken on the Client's behalf in accordance with the terms of this Agreement. Nevertheless, nothing in this Agreement, none of the services to be provided hereunder, nor any other matter shall:
- a) oblige the Manager or any Affiliate to accept responsibilities more extensive than those set out in this Agreement; or
 - b) give rise to any fiduciary or equitable duties which would prevent or hinder the Manager or any Affiliate from either:
 - i. performing the Investment Management Service or other services pursuant to this Agreement; or
 - ii. effecting transactions with or for the Client.

21. Representations and warranties

- 21.1. The Client represents, warrants and agrees, on the date of this Agreement and on a continuing basis that:⁵²
- a) it is duly organised and validly existing under the laws of its jurisdiction of incorporation;
 - b) it has all necessary power and authority to execute, deliver and perform this Agreement and to enter into the transactions contemplated by this Agreement;
 - c) it has all necessary power and authority to authorise the Manager to negotiate, execute, deliver and perform any agreement in connection with the provision of services under this Agreement on its behalf and to perform its obligations under any such agreements and enter into the transactions contemplated by this Agreement;
 - d) neither its entry into this Agreement nor into any transaction contemplated by this Agreement will breach any law or regulation applicable to the Client;⁵³
 - e) any restrictions to which it is subject relating to this Agreement or any transaction contemplated by this Agreement and the level of risk to be reflected in the Manager's exercise of discretion (whether as a matter of legislation, its governing documentation[, its Statement of Investment Principles]⁵⁴ or otherwise), including its ability to bear losses and its risk tolerance, are set out in the Guidelines and the Manager shall be entitled to assume that no restrictions other than those contained in the Guidelines apply;⁵⁵
 - f) it has read and understood the risk disclosures that have been separately notified to the Client by the Manager and which provide a description of the nature and risks of financial instruments including appropriate guidance on, and warnings of, the risks associated with investments in financial instruments or in respect of particular investment strategies;⁵⁶
 - g) it is acting as principal with respect to the transactions contemplated under this Agreement and shall accordingly be liable as principal for all obligations under this Agreement;

⁵² Representation and warranty protection extended to cover the term of the Agreement, rather than just on the date of the Agreement.

⁵³ Clarificatory amendment.

⁵⁴ For pension scheme Clients only.

⁵⁵ Elective MiFID II amendment to assist the Manager with its suitability assessment.

⁵⁶ Elective MiFID II amendment to reflect requirements under COBS 14.4A.3R.

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- h) it is the sole beneficial owner of all the assets in the Portfolio (or, where it is acting as trustee, it is acting on behalf of the beneficial owner) and that the assets are free from any lien, charge or other encumbrance or security interest;
 - i) it shall not, without the Manager's prior written consent, dispose of, encumber or otherwise deal with any of the assets comprising the Portfolio nor permit any other person, including the Custodian, to do so;
 - j) it shall promptly provide to the Manager, and update as required, all information or documents that are reasonably necessary for the Manager to receive (including a valid Legal Entity Identifier) with a view to the proper discharge of its functions under this Agreement or which the Manager may reasonably request for such purpose or which is required by any competent authority;⁵⁷ and
 - k) information or documentation provided by the Client or its agents to the Manager pursuant to this Agreement is accurate, complete, up-to-date and not misleading in any respect and the Client has notified the Manager of all such information which is reasonably relevant to the performance of the Manager's duties under this Agreement.

21.2. The Manager represents, warrants and agrees, on the date of this Agreement and on a continuing basis that:⁵⁸

- a) it is authorised and regulated by the FCA in carrying out the business of managing investments and shall remain so authorised and regulated at all times during the term of this Agreement;
- b) it is duly organised and validly existing under the laws of England and Wales; and
- c) it has all necessary power and authority to execute, deliver and perform this Agreement.

21.3. Save as expressly provided in this Agreement, no other representation or warranty, express or implied, is made by either Party. Each Party shall promptly notify the other Party if any representation ceases to be true, accurate or complete in any material respect.

⁵⁷ Elective MiFID II amendments to require the Client to keep the Manager updated and provide a Legal Entity Identifier.

⁵⁸ Reciprocal amendment in light of amendment to Clause 21.1.

22. Liability

- 22.1 The Manager shall be liable to the Client for any Losses incurred by the Client only to the extent that such Losses arise under the law of contract and are the direct result of any act or omission taken or omitted by the Manager or a Delegate during the term of, and under, this Agreement which constitutes negligence, wilful default or fraud of the Manager, such Delegate or their directors, officers or employees in providing any of the services under this Agreement. Without prejudice to Clause 22.4, the Manager shall not otherwise be liable for any other Losses suffered by the Client including Losses arising from:
- a) the Manager carrying out or relying on any Instructions or on any information provided or made available to the Manager by the Client, the Custodian, any agent of the Client or any person appointed or retained by the Manager under Clause 9;⁵⁹
 - b) any delays due to market conditions or changes in market conditions;
 - c) any delayed receipt, non-receipt, loss or corruption of any information contained in any electronic communication or for any breach of confidentiality resulting from email communication or any consequential loss arising from either of the foregoing; or⁶⁰
 - d) acts or omissions (including negligence, wilful default, fraud or insolvency) of any other person (including Counterparties, the Custodian and external data providers), unless otherwise specified in this Agreement.⁶¹
- 22.2 Without prejudice to Clause 22.4, the Manager shall not be liable in any circumstances for any Losses that constitute indirect, special or consequential loss, loss of profits, loss of savings, pure economic loss, loss of opportunity, loss of goodwill or loss of reputation in connection with or arising out of this Agreement.⁶²
- 22.3 The Manager shall not be responsible for any Losses incurred after the Termination Date under this Agreement unless and to the extent that the act or omission causing such Losses can be evidenced to have occurred prior to the Termination Date under this Agreement.
- 22.4 Nothing in this Agreement shall exclude or restrict any duty or liability which the Manager may have to the Client under FSMA or the FCA Rules [or, where relevant, the Pensions Act 1995]⁶³.

⁵⁹ Clause 9 refers to Counterparties.

⁶⁰ Modernisation amendments.

⁶¹ Clarificatory amendments.

⁶² Clarificatory amendments and exclusion of additional tortious claims as a result of recent case law. See further *Wellesley Partners LLP v Withers LLP* [2015].

⁶³ For pension scheme Clients only.

23. Indemnification

- 23.1. The Client indemnifies the Manager and any Delegate and their directors, officers and employees against any and all Losses paid, suffered or incurred by the Manager or the Delegate or their directors, officers or employees, directly or indirectly arising as a result of:
- a) the performance by the Manager or any Delegate of their duties under this Agreement; or
 - b) carrying out or relying on any Instructions and any information provided or made available to the Manager by the Client, the Custodian or any other agent of the Client or the Custodian,
- except to the extent that such Losses result directly from the negligence, wilful default or fraud of the Manager or any Delegate or their directors, officers or employees in providing the services under this Agreement.⁶⁴
- 23.2. Any indemnity given to the Manager or any Delegate under this Agreement is in addition to, and without prejudice to, any indemnity allowed to the Manager or any Delegate under applicable law.

24. Tax and accounting

- 24.1. The Client shall remain responsible for the management of its affairs for tax and accounting purposes. The Manager shall not provide the Client with tax advice or accounting advice or services. Subject to any specific requirements set out in the Guidelines, the Manager shall have no responsibility to take into account the Client's tax status in providing the services under this Agreement.
- 24.2. The Client shall promptly provide to the Manager all information or documents that are requested by any tax authority of the Manager in respect of the Client.
- 24.3. The Manager is under no obligation to report to the Client on the tax consequences of buying or selling assets in the Portfolio.

⁶⁴ Clarificatory amendments.

25. Instructions

- 25.1. The Client may, from time to time, give Instructions to the Manager directing the Manager to take, or refrain from taking, particular actions under this Agreement.
- 25.2. Any direction given to the Manager seeking to amend or vary the terms of this Agreement shall not be deemed to be an Instruction and shall be subject to the provisions of Clause 39.
- 25.3. The Manager shall be entitled to rely upon any Instruction from an Authorised Person, or from such other person where the Manager reasonably believes the Instruction to be from an Authorised Person, whether or not the authority of such person is then effective and without further enquiry of the Client in relation to the genuineness, authority or identity of the Authorised Person.
- 25.4. The Manager shall acknowledge Instructions received from the Client by acting on them unless the Client is promptly advised that the Manager believes:
- a) such Instructions to be conflicting or ambiguous;
 - b) such Instruction was not given by an Authorised Person; or
 - c) such action may not be practicable or might result in a breach of this Agreement or any applicable law or regulation.⁶⁵
- 25.5. The Manager shall not be obliged to give or make any other acknowledgement of Instructions.

26. Litigation assistance

- 26.1. The Manager shall have no authority or responsibility to take any action in the name of or on behalf of the Client with regard to any Litigation, including, without limitation, to file proofs of claim or other documents, or to investigate, initiate, join, monitor or settle any Litigation.⁶⁶
- 26.2. The Client shall be solely responsible for:
- a) keeping itself informed of any Litigation in which it may have a claim or for arranging for the Custodian or another third party to do so; and
 - b) investigating, initiating, joining, monitoring and settling any such Litigation.⁶⁷
- 26.3. Notwithstanding the foregoing, the Manager may, at the reasonable request of the Client, agree to disclose information held by the Manager directly relevant to such Litigation, subject to any duty of confidentiality owed to any third party by the Manager and provided that the Manager shall be fully indemnified to its reasonable satisfaction for all Losses that may be incurred or suffered by the Manager in connection with such disclosure.⁶⁸

⁶⁵ Clarificatory amendment.

⁶⁶ Clarificatory amendments to ensure the Manager is still able to be a party to Litigation (in its own name) and update of language.

⁶⁷ As asset owner, the Client is the proper plaintiff and the Custodian (or a specialist third party) is better placed than the Manager to monitor for potential and actual litigation.

⁶⁸ Clarificatory amendments vis-à-vis the extent of the Manager's involvement in Litigation.

27. [Work-outs]⁶⁹

- 27.1. The Manager may, but is not obliged to, participate in Work-outs provided that the Manager shall not be required to take any such action unless fully indemnified to its reasonable satisfaction for all Losses that may be incurred or suffered by the Manager in connection with such action.
- 27.2. In relation to Work-outs, from time to time the Manager may earn fees from issuers of debt instruments in respect of actions undertaken by the Manager as a representative of the beneficial owners of those debt instruments in a creditors' committee or similar body, which may include the Client, to maximise the value obtained by the beneficial owners of such bonds in a restructuring or any similar arrangement relating to the bonds or the issuer. The Client consents to the Manager retaining any remuneration received in respect of any Work-out.]

28. Termination

- 28.1. This Agreement shall continue until terminated in accordance with this Clause 28. This Agreement shall remain in full force and effect up to the Termination Date except as provided in Clause 28.6.
- 28.2. If at any time a Termination Event with respect to a Party has occurred, either Party may, by written notice to the other Party specifying the relevant Termination Event, designate a Termination Date not earlier than the day such notice is effective.⁷⁰
- 28.3. The Manager may at any time terminate this Agreement on [30]/ [60]/ [90]/ [•] Business Days' written notice. The Termination Date shall be the first Business Day which falls [30]/ [60]/ [90]/ [•] Business Days after the date on which written notice given to the Client was effective or such later date as specified in the notice.
- 28.4. The Client may at any time terminate this Agreement on written notice to the Manager. Such notice shall designate a date as the Termination Date which may be the same Business Day as the day on which written notice is given but shall not be more than [30]/ [60]/ [90]/ [•] Business Days after the date on which written notice given was effective (in both cases, the date on which written notice was given will be determined in accordance with the provisions of Clause 33).
- 28.5. Unless otherwise agreed between the Parties, in circumstances where the Manager terminates this Agreement pursuant to Clause 28.3, the Manager shall continue to supply the Investment Management Service up until the Termination Date and shall cooperate with and take such steps as the Client may reasonably require in order to effect the orderly termination of this Agreement and to transfer the Portfolio or an amount equal to the Portfolio to or at the direction of the Client.
- 28.6. Unless otherwise agreed between the Parties, in circumstances where the Client terminates this Agreement pursuant to Clause 28.4, the Client agrees and acknowledges that with effect from the Cessation of Investment Management Service Date up to and including the Termination Date, the following terms shall apply:
- a) the Manager shall cease to provide the Investment Management Service and in particular:
- i. the Manager will not effect any new purchases of assets in relation to the Portfolio provided that transactions already effected but awaiting settlement will be unaffected and shall settle as normal;

⁶⁹ Only likely to be relevant to fixed income Managers.

⁷⁰ Allows notice to be served by either Party, rather than just the Party in respect of which the Termination Event has occurred.

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- ii. the Manager will not effect any new sale transactions in relation to the Portfolio except pursuant to specific Instructions from the Client;
 - iii. the Manager shall not enter into new foreign exchange transactions (including renewing or so called “rolling-over” existing foreign exchange transactions) or derivative transactions in relation to the Portfolio except foreign exchange transactions required to cover any purchases effected prior to the Cessation of Investment Management Service Date;
 - iv. the Manager shall not re-invest income, dividends, proceeds of sale or other cash balances and that the cash limits in the Guidelines may be exceeded as a result; and
 - v. the Manager will undertake any corporate action decisions which it reasonably believes necessary;
- b) the Manager will no longer be responsible for compliance with the Guidelines or achieving the investment objectives and the Client acknowledges that the performance of the Portfolio may fall short of the performance otherwise achievable for an on-going portfolio;
 - c) the performance measurement for the Portfolio shall end with effect from [the Cessation of Investment Management Service Date]/[the Termination Date]/[such date as is agreed between the Parties];
 - d) the Manager will continue to vote all proxies in accordance with its proxy voting policy;
 - e) the Manager will not be responsible for undertaking any transactions affecting the Portfolio intended to facilitate reorganisation of the Portfolio by the Client or any other person except under separate written agreement between the Client and the Manager; and
 - f) the Manager may direct the Custodian to retain or realise any investments of the Portfolio as may be required to settle transactions already initiated or to pay any outstanding liabilities of the Client in either case without prior notice to the Client. If there is a dispute as to the payment of fees to the Manager, the Client may require the disputed amount to be held in a third party escrow account pending resolution of the dispute.⁷¹
- 28.7. The Manager will continue to provide periodic statements pursuant to Clause 18.2 up to the Termination Date.
- 28.8. The Client shall pay:
- a) the fees and expenses of the Manager due up to the Termination Date; and
 - b) any additional expenses necessarily incurred by the Manager in terminating the Agreement,
- and the Client shall bear any losses necessarily realised in settling or concluding outstanding obligations.
- 28.9. Termination of this Agreement shall not affect accrued rights, existing commitments or any contractual provision intended to survive termination.

⁷¹ Clarificatory amendments.

29. Confidentiality

- 29.1. Each Party shall treat Confidential Information as confidential and shall not disclose such information except if:
- a) it is required to do so under applicable law;
 - b) it is so requested by competent regulatory or fiscal authorities or a court or tribunal of competent jurisdiction;
 - c) it is disclosed in confidence to its advisers, auditors or insurers where reasonably necessary for the performance of their professional services; or
 - d) it is disclosed in confidence to its industry body for the purpose of compiling and publishing industry statistics or analysis.
- 29.2. Notwithstanding Clause 29.1, the Manager may disclose in confidence any Confidential Information to any person (including, without limitation, Affiliates, Delegates, Counterparties (in accordance with market practice) or any other persons) in all cases only to assist or enable the proper performance of its services and to enforce its obligations and rights under this Agreement. The Manager may disclose such facts about the appointment in a press release as the Manager and the Client may agree.⁷²
- 29.3. Notwithstanding Clause 29.1, the Manager may disclose any Confidential Information to a competent regulatory authority as may be required in order to assist the Client in complying with its obligations under applicable law in connection with the services provided for under this Agreement.⁷³
- 29.4. [Notwithstanding Clause 29.1, the Client may disclose in confidence and on a non-reliance basis, any Confidential Information to employers participating in the Scheme or their relevant group companies and their advisers, where it is reasonable to do so in the context of administering the Scheme.⁷⁴]
- 29.5. Confidential Information shall remain confidential for a period of two (2) years from the Termination Date of this Agreement.
- 29.6. The Parties agree that damages may not be an adequate remedy for any breach of this Clause 29 and, accordingly, each shall be entitled (but not limited) to seek injunctive or other equitable relief restraining the other from breaching this Clause 29.
- 29.7. If the Client is a “public authority” for the purposes of section 3 of the FoIA, it shall immediately notify the Manager if it:
- a) receives a request for information under section 8 of the FoIA which covers commercially sensitive or confidential information relating to the Manager, this Agreement or to the services provided under it;
 - b) responds to such a request;
 - c) receives a complaint in relation to the handling of such a request;
 - d) becomes aware that an application has been made to the Information Commissioner (as defined in the FoIA) for a decision in relation to such a request;
 - e) becomes aware that the Information Commissioner has served any notice on it under Part IV of the FoIA in relation to such a request;

⁷² Clarificatory amendments.

⁷³ Elective MiFID II amendments to explicitly facilitate transaction and position reporting.

⁷⁴ For pension scheme Clients only. This reflects that, in the context of a pension scheme, the sponsoring employer usually participates in investment meetings and the development of investment strategy. This wording allows employers to do so without risking a technical breach of confidentiality requirements.

f) becomes aware that an appeal has been made to the Information Tribunal (as defined in the FoIA) or the court in relation to such a request; or,

g) becomes aware that commercially sensitive or confidential information relating to the Manager, this Agreement or to the services provided under it has been or is about to be disclosed to a third party without the Manager's express written permission,

and in each case shall provide the Manager with such details as reasonably may be requested by the Manager. When the Client has notified the Manager of the nature of the request received by the Client, the Client then agrees to give the Manager a reasonable opportunity to comment on whether an exemption from the requirement to disclose may be applicable and the Client shall take due regard of any such comments before making its response. The Manager agrees to respond in a timely manner.

29.8. In providing the services under this Agreement, neither the Manager, its Affiliates or a Delegate shall be obliged to disclose or to take into consideration (or to require any third party to disclose or take into consideration) any information:

a) the disclosure or use of which might breach any prohibition, duty or confidence to any other person or arising under any applicable law;

b) which comes to the notice of an employee, officer or agent of the Manager, its Affiliates or a Delegate, but properly does not come to the actual notice of an individual managing the Portfolio; or

c) relating to the nature or extent of any interest the Manager or any Affiliate has in any investments.⁷⁵

30. Data protection⁷⁶

30.1. Each Party will comply with Data Protection Laws.

30.2. In order to provide the services the Manager or a Delegate may need to:

a) communicate with the Client's trustees, owners, officers and employees ("**Client Contacts**") in relation to the services;

b) process identification details of the Client Contacts in order to confirm their identities;

c) check such Personal Data against databases of individuals who are subject to sanctions, classified as "politically exposed persons" or have committed crimes and to follow up any suspicions to ensure that the Manager complies with its anti-money laundering and terrorism obligations and to avoid fraud itself;

d) record or monitor communications as set out in Clause 31;

e) use such Personal Data to meet the Manager's compliance and regulatory duties; and /or

f) transfer such Personal Data outside the European Economic Area and the UK and disclose it to anti-fraud organisations and law enforcement or regulatory agencies anywhere in the world,

and the Manager will be acting as a data controller in respect of such processing.⁷⁷

⁷⁵ Relocated to emphasise the basic confidentiality obligation.

⁷⁶ Revised to take into account changes required as a result of the EU General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR).

⁷⁷ The Manager is a data controller in respect of these purposes as it is collecting and processing the information to satisfy its own regulatory obligations and it determines what information it will collect, who it will be stored for and how long it will be retained for (rather than the Client).

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- 30.3. Where the Client provides the Manager with Client Contact details or where requested to do so by the Manager, the Client will notify such individuals that the Manager may need to process their Personal Data for the purposes set out in Clause 30.2.
- 30.4. The Manager will maintain a data protection fair processing notice on its website setting out the details of such processing and all other information required by, and in compliance with, Data Protection Laws, which the Client will also refer Client Contacts to when it makes a notification under Clause 30.3.⁷⁸
- 30.5. [For the avoidance of doubt, except as set out above, the Manager shall be responsible for providing notices and obtaining any consents in relation to any processing of Client Contacts' Personal Data, including in relation to marketing.]⁷⁹

31. Communications and Taping

- 31.1. Subject to compliance with applicable law, either Party may record telephone conversations with the other. The Manager may record or monitor telephone conversations and other communications with or by the Client (including mails, emails or documentation of client orders made at meetings). The Client agrees that the Manager may deliver copies or transcripts of such recordings to any court or competent authority. A copy of any such conversations with the Client and communications with the Client will be available on request for a period of five years (or, where requested by the FCA, for a period of up to seven years) from the date when the record is made.
- 31.2. The Manager will communicate with the Client [in English] and, subject to Clause 33, will communicate with the Client as considered appropriate, including through the Manager's website, by email or otherwise. [The Client hereby consents to receiving communications and reports under this Agreement (including but not limited to valuations) electronically online via the Manager's secure client website ([insert website link]).] The Client understands that if documents are only available online the Client will not receive a printed version. A paper copy of such communications and reports will be available to the Client upon request.⁸⁰

32. Force Majeure

No Party to this Agreement shall be liable for any failure or delay in performing any of its obligations under or pursuant to this Agreement, and any such failure or delay in performing its obligations will not constitute a breach of this Agreement, if and to the extent that such failure or delay is due to an event of Force Majeure.

⁷⁸ Note that the detail required by the GDPR must be included in the Manager's website privacy policy.

⁷⁹ Optional. Include if the Manager has given the correct marketing notice/opt-in or out to the relevant Client Contact at the time it collects their information.

⁸⁰ Mandatory MiFID II amendments to reflect requirements under Article 16(7), MiFID II.

33. Notices

Any notice in respect of this Agreement may be given in any manner set forth below to the address and/or email provided in Schedule 5, or to such other address as shall be notified in accordance with this Clause 33 by that Party to the other Party from time to time and will be deemed given as indicated:

- a) if in writing and delivered in person or by courier, on the date it is delivered;
- b) if sent by registered or certified mail or equivalent, on the date that mail is delivered; and
- c) if sent by electronic messaging system including email, on the date that electronic message is acknowledged by the recipient,

unless the date of delivery or that receipt, as applicable, is not a Business Day or that notice is delivered, received or acknowledged, as applicable, after 5pm local time in London on a Business Day, in which case that notice shall be deemed given and effective on the first following day that is a Business Day.⁸¹

34. Complaints

All formal complaints by the Client relating to the services provided by the Manager under this Agreement should in the first instance be made in writing to the compliance officer of the Manager. Subsequently, the Client may have a right to complain directly to the Financial Ombudsman Service. A copy of the Manager's complaints management policy is available on request and will otherwise be provided in accordance with the FCA Rules.⁸²

35. Compensation

The Client may be entitled to compensation from the Financial Services Compensation Scheme if the Manager cannot meet its obligations. This depends on the type of business and the circumstances of the claim. Generally, a professional client will not be eligible for compensation.

36. Assignment

- 36.1. Save as provided in this Clause 36, neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party.
- 36.2. The Client agrees that the Manager may assign its rights under this Agreement to one or more of its Affiliates by giving the Client notice which shall specify a date upon which the assignment shall become effective.
- 36.3. [Notwithstanding the foregoing, the Manager may, at any time prior to the date set for the United Kingdom to cease being a member of the EU or 31 December 2020 if the withdrawal agreement and transition period is finally agreed, with prior written notice to the Client, transfer its rights and obligations in this Agreement to an Affiliate based within a member state of the European Union, who may then delegate the provision of some or all of the services to the Manager.]⁸³

⁸¹ Modernisation amendments.

⁸² Mandatory MiFID II amendments to reflect the wording set out the Delegated Regulation which refers to a firm's 'complaints management policy'.

⁸³ Optional. Include if relevant to the Manager's Brexit contingency plans.

37. Entire agreement, waivers and remedies

- 37.1. This Agreement, including its Schedules (as amended from time to time) and any current Instructions, constitutes the entire agreement between the Manager and the Client with respect to services relating to the Portfolio. This Agreement supersedes all prior understandings, arrangements, agreements, representations, proposals or communications between the Parties, whether written or oral. Neither Party has relied on any statements or representations during the negotiations other than those expressly incorporated in this Agreement.
- 37.2. No failure on the part of a Party to exercise, nor delay by it in exercising, any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other further exercise of that right or remedy or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 37.3. So far as permitted by law, and except in the case of fraud, the Client agrees and acknowledges that its only rights and remedies shall be for breach of the terms of this Agreement, to the exclusion of all other rights and remedies including those in tort or arising under statute.

38. Illegality

The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of this Agreement nor the legality, validity or enforceability of any other provision.

39. Amendment

This Agreement, including the Schedules, may not be amended without the prior written agreement of the Parties except that:

- a) the Manager may amend the Agreement in order to comply with, or to make the Agreement consistent with, any legal or regulatory requirements or changes to which the Manager may be subject by providing a written notice to the Client of such amendment;
- b) the Client may from time to time notify the Manager in writing of any changes to the Authorised Persons; and
- c) either Party may amend their contact details in Schedule 5 by providing written notice to the other Party of such amendment.

Any amendment under sub-Clauses a), b) and c) shall take effect on the date specified in the written notice.

40. Rights of third parties

A person who is not a Party to this Agreement (other than a successor in title, permitted assignee or Indemnified Person) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

41. Counterparts

This Agreement may be executed in any number of counterparts, each of which is an original but all of which together constitute one and the same instrument.

42. [Governing law and jurisdiction

- 42.1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 42.2. The Parties agree that the English courts shall have exclusive jurisdiction to determine any Proceedings. Each Party irrevocably submits to the exclusive jurisdiction of the English courts in respect of such Proceedings and waives any objection to any such Proceedings in such courts on the grounds of venue, waives any claim that Proceedings brought in such courts have been brought in an inappropriate or inconvenient forum and further waives the right to object, with respect to such Proceedings, that such courts do not have any jurisdiction over such Party.
- 42.3. The Client irrevocably appoints the process agent (if any) specified in Schedule 5 to receive, for it and on its behalf, service of process of any Proceedings. Nothing in this Agreement will affect the right of the Manager to serve process in any other manner permitted by law.]

[OR]

[Arbitration⁸⁴

- 42.4. Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this Clause 42.
- 42.5. The number of arbitrators shall be three.
- 42.6. The seat, or legal place, of arbitration shall be London.
- 42.7. The language to be used in the arbitral proceedings shall be English.
- 42.8. The governing law of this Clause 42 shall be the substantive laws of England and Wales.]

⁸⁴ LCIA standard wording. Included to give the Manager optionality with respect to dispute resolution.



The Parties have executed this Agreement on the respective dates specified below with effect from the Effective Date.

Signed for and on behalf of the Manager

By:

Title:

Print Name:

Date:

Signed [by][for and on behalf of] the Client

By:

Title:

Print Name:

Date:

Schedule 1

List of Authorised Persons of the Client and form of Instructions

[Insert list of Authorised Persons]

Instructions

[Consider use of email and processes for accepting Instructions in that format]

Schedule 2

Guidelines

[Insert the Guidelines agreed between the Parties]

[Consider the following provisions of the Agreement which cross-refer to the Guidelines:

- a) In-House Funds (Clause 1 – Definitions);
- b) Performance Commencement Date (Clause 1 – Definitions);
- c) Guidelines (Clause 3.2(b) for applicability prior to the Performance Commencement Date; Clause 7.2);
- d) Delegation of Investment Management Service (Clause 8.1);
- e) Dealing and use of Counterparties (Clause 9.1);
- f) Borrowing (Clauses 15.1 and 15.2);
- g) Derivatives (Clause 16);
- h) Stocklending and repos (Clause 17);
- i) Restrictions (Clause 21.1(e)); and
- j) Tax and accounting (Clause 24.)

[Consider strategic risk warnings]

[Consider including details from Statement of Investment Principles for pension scheme Clients]⁸⁵

⁸⁵ For pension scheme Clients only. There is a statutory requirement on managers of pension scheme assets to invest broadly in accordance with the Statement of Investment Principles.

Schedule 3

Fees

[Insert fee schedule and consider fees post cessation of Investment Management Service]

Schedule 4

Derivatives⁸⁶

[These terms apply in cases where the Client has not instructed the Manager to use a specific Counterparty under specific terms concluded directly between the Client and such Counterparty.]

Where the Manager is authorised pursuant to the Guidelines to enter into transactions in derivatives subject to the Guidelines and any Instructions, the following terms shall apply:

- a) subject to the Order Execution Policy, the Client authorises the Manager to effect transactions in derivatives with such Counterparties and on such trading venues as it reasonably considers appropriate. Where applicable, all such transactions shall be effected in accordance with the rules and regulations (if any) of the relevant market or exchange and the Manager may take all such steps as may be required or permitted by such rules and regulations and/or by appropriate market practice;
- b) the Manager shall select and use Counterparties, markets or exchanges pursuant to paragraph a) above in accordance with the Standard of Care (unless instructed by the Client to use a specific Counterparty or trading venue in which case the Manager shall have no responsibility for the selection or use of such Counterparty or trading venue);
- c) notwithstanding paragraph b) above, and except as agreed in the Guidelines, the Manager shall have no responsibility for monitoring the creditworthiness of any Counterparty after a transaction in derivatives has been entered into with such Counterparty and, in particular, shall not be required to terminate early or consider the early termination of any transaction in derivatives due to the creditworthiness of, or any other factors relating to, the relevant Counterparty and shall have no liability for any Losses arising out of any failure to terminate early a transaction in derivatives;
- d) the Client authorises the Manager to negotiate, amend, execute, sign or deliver on behalf of the Client all such documents including but not limited to agreements, master agreements, account opening documents, master confirmation agreements, confirmations, credit support documentation (whether by way of title transfer or by way of security) and other instruments as the Manager shall consider necessary or desirable to effect such transactions in derivatives pursuant to the Guidelines;
- e) the Client authorises the Manager to give such representations and warranties including tax representations to Counterparties as agent on behalf of the Client as are customary;
- f) the Client agrees to provide such further information reasonably requested by the Manager;
- g) the Client shall instruct the Custodian to act in accordance with instructions from the Manager including, but not limited to, making such payments or deliveries, pledging or debiting the Portfolio with any sums required to pay or supplement any deposit, margin, collateral or market support as may be required in respect of transactions in derivatives;

⁸⁶ To be tailored by the Manager. Does not cover EMIR or the SFTR.

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- h) the Manager may allocate, novate, amend, terminate, settle, set-off or close-out such transactions in derivatives in its absolute discretion and without conferring with or obtaining the consent of the Client;
 - i) subject to paragraph b) above, the Client acknowledges that under the relevant agreement or any relevant rules of any clearing house or any exchange, the Counterparty's recourse in the event of any Losses in relation to transactions in derivatives may not be limited to the assets of the Client in respect of the Portfolio;
 - j) the Manager shall not be liable for any Losses arising from any default by, or lack of enforceability of any agreement against, the relevant Counterparty or arising from the unenforceability of the termination, close-out, netting or credit support provisions of any agreement in the event of the default, insolvency or similar event of the relevant Counterparty;
 - k) the Client acknowledges that under the terms of credit support documentation, the Client may be required to deliver upfront or initial collateral, which will typically mean that the collateral provided by the Client will be greater than the amounts due by the Client under the agreement and that the Client may rank as an unsecured creditor of the Counterparty to the extent of such over-collateralisation; and,
 - l) the Client acknowledges that where collateral is delivered to the Counterparty by way of title transfer, if the Counterparty were to become insolvent, the Client would rank as an unsecured creditor in respect of any over-collateralised amounts.

Schedule 5

Manager and Client details

With respect to the Manager:

Address: [.]
Telephone: [.]
Attn: [.] [by reference to position]
Email: [.]

With respect to the Client:

Address: [.]
Telephone: [.]
Attn: [.] [by reference to position]
Email: [.]

Client's process agent (where relevant):

Address: [.]
Telephone: [.]
Attn: [.] [by reference to position]
Email: [.]

The Investment Association

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