

NORTH YORKSHIRE COUNTY COUNCIL**PENSION FUND COMMITTEE****26 JANUARY 2017****LGPS POOLING ARRANGEMENTS****Report of the Treasurer****1.0 PURPOSE OF REPORT**

- 1.1 To update the Committee on the Government's proposal to pool the Local Government Pension Scheme's investments in England and Wales.
- 1.2 To ask the Committee to recommend for approval by the Executive (and then full Council), an approach for the Council, as Administering Authority for the North Yorkshire Pension Fund, to meet its regulatory obligations for asset pooling through joining the Border to Coast Pensions Partnership (BCPP).

2.0 BACKGROUND

- 2.1 In November 2015 the Government issued an Investment Reform Criteria and Guidance document inviting proposals for pooling. This required all LGPS administering authorities to submit to Government initial and detailed proposals by 19 February 2016 and 15 July 2016 respectively.
- 2.2 On 15 January 2016 Members agreed to provisionally join a pooling arrangement subsequently named the Border to Coast Pensions Partnership (BCPP), on the basis that this pool represented the best fit for NYPF. The Fund subsequently became a joint signatory to both the BCPP initial and detailed proposals.
- 2.3 On 1 November 2016 the Local Government Pension Scheme (Management and Investment of Funds) Regulation 2016 came into force. These Regulations mandate that the 89 separate Local Government Pension Scheme Funds in England and Wales combine their assets into a small number of investment pools.
- 2.4 The Regulations require each LGPS administering authority to formulate, having taken proper advice, an investment strategy and to publish a statement of that strategy no later than 1 April 2017. This Investment Strategy Statement must include the administering authority's approach to pooling investments including the use of collective investment vehicles and must be in accordance with guidance issued by the Secretary of State.

- 2.5 The Guidance states that each LGPS administering authority must commit to a suitable pool to achieve benefits of scale and must confirm their chosen investment pool meets the Investment Reform and Criteria issued in November 2015. The Secretary of State has direction and intervention powers if he is not satisfied that an administering authority is complying with its obligations in relation to the Regulations.
- 2.6 A number of discussions have taken place within the Pension Fund Committee (PFC). The issue of pooling has also been discussed at two Members' Seminars; the Pensions Board; and a briefing was held for employers on 13 January 2017 so that representations can be made to the County Council as administering authority. Concerns have been expressed by some stakeholders about the concept of pooling and the potential for the LGPS to be used to fund infrastructure based upon government wishes rather than sound investment strategy. The views of the PFC on this issue will be fed in verbally to the Executive when it considers this issue on 31 January 2017.

3.0 POOLING PROPOSAL DEVELOPMENTS

- 3.1 Following a meeting with the Secretary of State on 24 November 2016, he approved BCPP as meeting the requirements of the Investment Reform and Criteria document by letter (Appendix 1 to the Report to Executive, attached as an appendix) received on 12 December 2016.
- 3.2 The Member Steering Group (MSG) last met on 18 November 2016 and an update was provided to the Committee on 24 November 2016. It has not met since that date. The MSG is due to meet again on 31 January 2017.
- 3.3 The three workstreams overseen by the MSG have been progressing the work required to achieve pooling, pending each of the BCPP administering authorities giving approval to formally join the arrangement. To remind Members, they are:
- Operating model – covering the creation of the FCA regulated company, defining the range of investment sub-funds, and the contractual arrangements to support investment management
 - People – covering the Board of Directors, investment and non-investment staff, and the property/location
 - Governance – covering the arrangements between the administering authorities as investors in and owners of the company, and the performance monitoring arrangements for investments
- 3.4 The initial work of the Governance workstream has been on the key documents each administering authority in BCPP will be asked to approve. They will ultimately be part of a Report to Full Council scheduled for 15 February 2017. A draft of the report to the Executive which would then be

directed to full Council is attached as an Appendix. The documents are, with Appendix numbers relating to the Report to Full Council:

- The Inter Authority Agreement, which includes the Terms of Reference for the Joint Committee, the body that will replace the Member Steering Group (Appendix 3)
- The Shareholder Agreement (Appendix 4)
- The Articles of Association to be adopted by BCPP Ltd (Appendix 5)

3.5 The legal documents supporting the BCPP arrangement requires the agreement of all 12 administering authorities, which is a significant undertaking given the expected range of views and opinions. To facilitate this, there have been meetings with S151 Officers, Monitoring Officers and legal advisers, followed by an iterative process involving the three groups to finalise the documents.

3.6 At the time of writing this report the documents are in draft form only. They are close to completion and are expected to be finalised in time for the Full Council meeting on 15 February 2017.

4.0 NEXT STEPS

4.1 Members have discussed pooling arrangements at meetings over the evolution of the Government's requirements and of BCPP. There are significant benefits available from pooling investments, such as reduced investment management fees through economies of scale, and improved access to the alternatives market, particularly in relation to infrastructure.

4.2 However there are also concerns. Members have expressed concern that a reduction in direct engagement with investment managers could impair their ability to make decisions at the strategic asset allocation level. This is a concern as fund manager selection has often been a successful source of raising knowledge within the Pension Fund Committee resulting in a better informed investment strategy. It is likely that fund managers will still wish to influence individual Pension Fund Committee's strategies and will still therefore look to meet and influence decision makers (albeit with perhaps less frequency and with a understanding that fund management selection itself is decided elsewhere). Members have also raised concerns about the additional layer of management between the Fund and the investment managers resulting in additional expense and complexity to governance arrangements.

4.3 It is difficult to assess the balance between the two but it is clear that government expects pooling to progress rapidly and for arrangements to be in place by April 2018. Members have previously decided to support pooling developments through BCPP, albeit with some reluctance given high

investment performance levels within the NYPF in recent years. This reluctance is directed at the Governments requirements and pooling generally rather than at BCPP, which has been assessed as providing the best fit for NYPF by officers and the Fund's Investment Consultant.

- 4.4 A significant factor Members have considered has been the expected compulsion from Government, and the potential consequences of a failure to sign up to a pool. These consequences are clearer, now that the LGPS (Management and Investment of Funds) Regulations 2016 have been enacted, giving the Secretary of State powers of intervention. A real possibility is that a refusal to formally join BCPP will result in NYPF being forced to join another less suitable pooling arrangement.
- 4.5 In summary, pooling does present some opportunities to reduce net costs and to enjoy some wider investment opportunities. However, there will be higher costs in operating a FCA regulated body and success cannot be guaranteed. Members will therefore need to consider the best approach from a range of 3 broad options:-
1. Sign up to the BCPP and accept compromises are inevitable but the approach can be influenced as part of the team or
 2. Look to join another Pool – but this will require significant time and willingness on the part of another pool to accept another member or
 3. Elect to not join any Pool and risk the Secretary of State exercising his powers of direction.
- 4.6 A final point to note is that the Investment Strategy Statement, which will replace the Statement of Investment Principles and will describe NYPF's approach to pooling, will be brought to the next meeting of this Committee, on 23 February 2017.

5.0 **RECOMMENDATION**

- 5.1 Members are recommended to approve the attached report for consideration by the Executive with the intention that it is then considered by full Council, acting as administering authority for the NYPF, on 15 February 2017.

GARY FIELDING
Treasurer
Central Services
County Hall
Northallerton

20 January 2017

Background documents: None

NORTH YORKSHIRE COUNTY COUNCIL

**EXECUTIVE
31 JANUARY 2017**

**LOCAL GOVERNMENT PENSION SCHEME
REQUIREMENTS FOR ASSET POOLING**

Report of the Treasurer of the North Yorkshire Pension Fund

1.0 PURPOSE OF REPORT

- 1.1 To propose an approach to ensuring the Council as the Administering Authority for the North Yorkshire Pension Fund can meet its regulatory obligations for asset pooling through joining the Border to Coast Pensions Partnership.
- 1.2 To make a recommendation to the Executive on 31 January 2017 so that the Executive can then make a proposal to full Council on 15 February 2017.
- 1.3 The Pension Fund Committee are considering this report at a special meeting on 26 January 2017. A verbal update of the views of the Pension Fund Committee will therefore be provided to the Executive.

2.0 BACKGROUND

North Yorkshire Pension Fund

- 2.1 The North Yorkshire Pension Fund (NYPF) has assets of £2.8bn, liabilities of £3bn and a funding level of 93% (30 September 2016). There are 136 contributing employers from the public and private sector, and over 90,000 active, deferred pensioner and pensioner members.

Local Government Pension Scheme Asset Pooling

- 2.2 Following three years of consultation up to November 2015, the Government issued an Investment Reform Criteria and Guidance document inviting proposals for pooling. Estimated annual savings were assessed as £200m - £300m across the Local Government Pension Scheme (LGPS).
- 2.3 In July 2015 Budget, the then Chancellor announced the Government's intention to work with (LGPS) administering authorities to ensure they pool investments to reduce costs while maintaining investment performance.
- 2.4 The Criteria and Guidance published in November 2015 required all LGPS administering authorities to submit to Government initial and detailed proposals by 19 February 2016 and 15 July 2016 respectively.

- 2.5 On 15 January 2016 the Pension Fund Committee (PFC) agreed to provisionally join a pooling arrangement subsequently named the Border to Coast Pensions Partnership (BCPP), on the basis that this pool represented the best fit for NYPF.
- 2.6 NYPF is a joint signatory to both the BCPP initial and detailed proposals.
- 2.7 Eight separate investment pools submitted detailed proposals to Government by 15 July 2016, including BCPP. The other seven pools are as follows (figures as at 31 March 2015):
- Central - a group of funds in the Midlands, with assets of £34bn
 - Brunel - a group of funds in the South West, with assets of £22bn
 - ACCESS - a South East based group of funds, with assets of £36bn
 - Wales - all 8 funds in Wales, with assets of £12bn
 - Northern - Merseyside, Greater Manchester and West Yorkshire, with assets of £36bn
 - London - all 33 London boroughs, with assets of £25bn
 - Local Pensions Partnership - Lancashire, London Pension Fund Authority and Berkshire, with assets of £14bn
- 2.8 On 1 November 2016 the Local Government Pension Scheme (Management and Investment of Funds) Regulation 2016 came into force. These Regulations mandate that the 89 separate Local Government Pension Scheme Funds in England and Wales combine their assets into a small number of investment pools.
- 2.9 Those Regulations require each LGPS administering authority to formulate, having taken proper advice, an investment strategy and to publish a statement of that strategy no later than 1 April 2017. That investment strategy must include the administering authority's approach to pooling investments including the use of collective investment vehicles and must be in accordance with guidance issued by the Secretary of State.
- 2.10 The Guidance states that each LGPS administering authority must commit to a suitable pool to achieve benefits of scale and must confirm their chosen investment pool meets the Investment Reform and Criteria issued in November 2015. The Secretary of State has direction and intervention powers if he is not satisfied that an administering authority is complying with its obligations in relation to the Regulations.
- 2.11 The Secretary of State approved BCPP as meeting the requirements of the Investment Reform and Criteria document by letter (**Appendix 1**) dated 13 December 2016.

2.12 There is an extremely challenging timetable in order to meet the government's expected timetable for the start of the Pools. For the Pools to be able to manage from April 2018 there is a need to create a fully regulated FCA company and that will require core systems and processes. This, in turn, will require dedicated staff who will themselves be subject to FCA scrutiny. As a result, the BCPP is looking for firm commitment before March 2017 so that this process can begin in earnest.

3.0 POOLING PROPOSALS

Overview

3.1 The BCPP is proposed to be formed of 13 LGPS Funds with combined assets of over £40 billion at 30 September 2016. Fund values totalling £35.9m were included in the proposal to Government as they were based on data as at 31 March 2015 and are set out in the table below.

BCPP Partners:	Fund Value at 31/03/2015 (£bn)
Bedfordshire Pension Fund	1.7
Cumbria Pension Fund	2.0
Durham Pension Fund	2.3
East Riding Pension Fund	3.7
Lincolnshire Pension Fund	1.8
North Yorkshire Pension Fund	2.4
Northumberland Pension Fund	1.1
South Yorkshire Pension Fund	6.3
South Yorkshire Passenger Transport Pension Fund	0.2
Surrey Pension Fund	3.2
Teesside Pension Fund	3.2
Tyne and Wear Pension Fund	6.4
Warwickshire Pension Fund	1.7
BCPP TOTAL	35.9

3.2 In developing the BCPP proposal in response to the Government's pooling requirements, both the independent specialist legal and cost/benefit advisors concluded that the most appropriate approach, given the constituent make-up of the partner Funds of BCPP, was for a separate vehicle to be established in the form of a wholly owned Teckal compliant company, which would be regulated by the Financial Conduct Authority (FCA).

Financial Assessment

- 3.3 Empirical evidence from independent cost consultants CEM Benchmarking shows that if appropriately implemented, larger asset pools can achieve material benefits in fee savings and/or in transaction costs, plus they generally have improved governance structures. Specialist external advice acquired for BCPP further supports this.
- 3.4 The proposal submitted to government in July 2016 outlines that the BCPP set up costs are expected to be between £2.28m and £4.15m – of which NYPF will be responsible for 1/12th i.e. between £190k and £350k. These amounts will be payable over the lead-in period up to formal operation of the newly created asset management company, scheduled for April 2018.
- 3.5 The initial savings projections detailed in the proposal (high and low case) show that once operational the full annual savings to BCPP are estimated to be between £22.4m to £52.4m per year by 2030 (i.e. when all the alternatives in closed ended funds have run off and have been reinvested through BCPP Ltd). The payback period for all 12 Funds combined is 2 to 5 years depending on the scenario.
- 3.6 The annual savings estimated for the North Yorkshire Pension Fund are between £1.4m and £2.8m by 2030 (a range of approximately 5 to 10 basis points on the total of NYPF investments) . The payback period for the setup costs is estimated at between 2 and 6 years based upon this assessment.

Legal Assessment

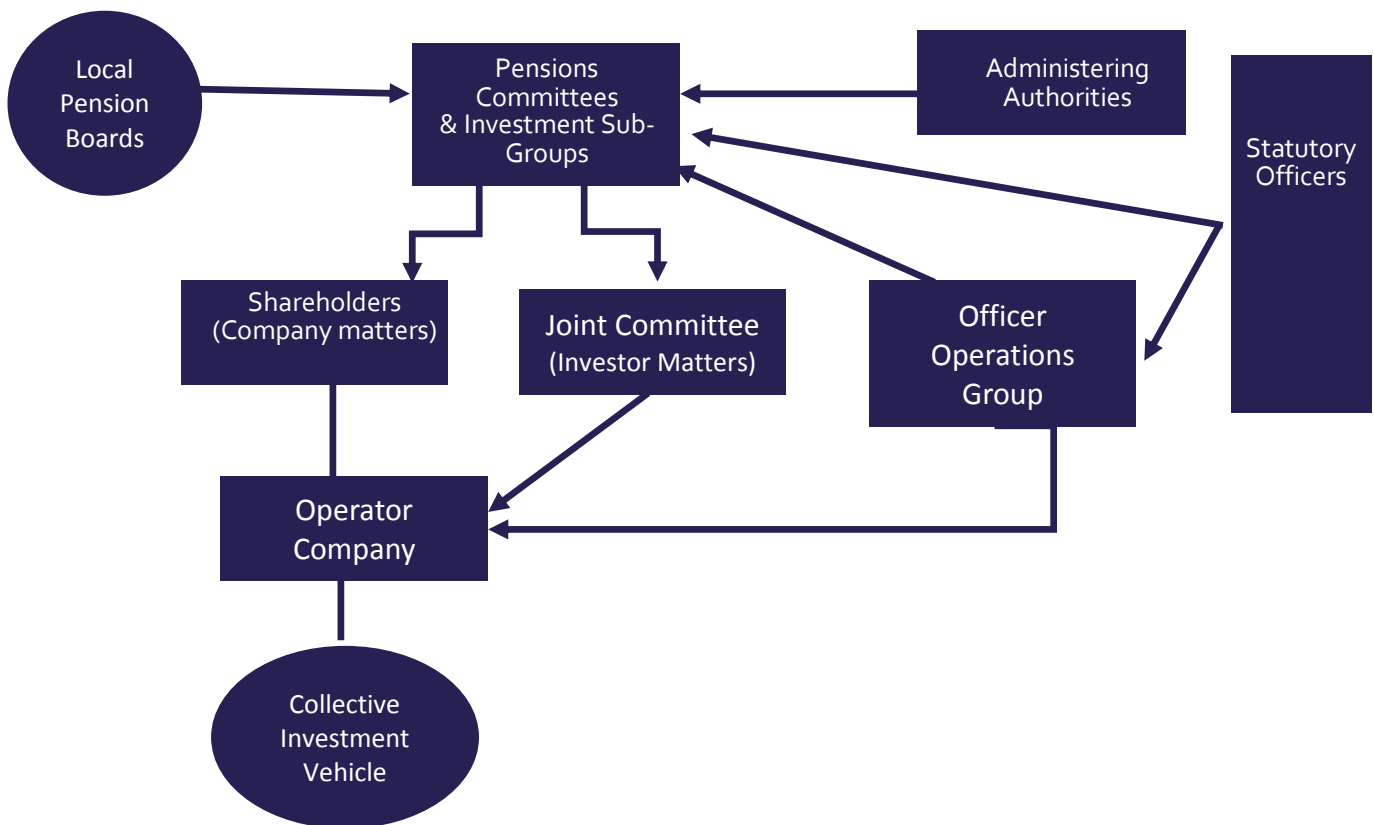
- 3.7 The work to develop the BCPP pooling proposal through the establishment of BCPP Ltd has been supported by two sets of external lawyers. Eversheds has been appointed to advise the newly constituted company and to support its set up. Squire Patton Boggs has been appointed to advise the Partner Funds in reaching their decision to approve the arrangements, to ensure the interests of the Partner Funds are reflected in the constitution of the company and the Shareholder Agreement, and to ensure that the governance arrangements, specifically the Joint Committee, are fit for purpose.
- 3.8 The Summary of Pool Governance Structure document, attached as **Appendix 2** gives a general description of the arrangements, and draws out key themes and their implications. It has been prepared by Eversheds and approved by Squire Patton Boggs. It refers to documentation, described elsewhere in this Report, including the Shareholder Agreement and the Inter Authority Agreement and has been negotiated with the benefit of legal advice from both firms. Monitoring Officers, Section 151 officers and other representatives from all Administering Authorities have been engaged in the process of developing and finalising the documentation in what has been a very challenging timetable. Due to the challenging timescales for approval the legal documents that are appended to this report are currently in draft form and are subject to change before finalisation. This report therefore recommends delegation to the Assistant Chief Executive – Legal &

Democratic Services in consultation with Corporate Director – Strategic Resources.

- 3.9 Squire Patton Boggs have produced a legal summary of the issues at **Appendix 6** and conclude that “the proposal to participate in the BCPP Pool and to subscribe for shares in BCPP Limited is in compliance with the statutory obligations which fall upon the Authorities, and there are no obstacles to the structure which has been proposed”.

Governance

- 3.10 There will be a need for each partner Fund to distinguish between its role as a shareholder, which is a new function, versus its role as an investor in a collective investment vehicle. The two have fundamentally different functions.
- 3.11 Shareholder functions relate to the ownership of BCPP Limited and are subject to company law and key company documents. Because the Council as a corporate body cannot exercise its rights as shareholder directly, it will need to act through a nominated shareholder representative who will either vote by attendance at shareholder meetings of the company or by signing written resolutions as permitted by company law.
- 3.12 Investor rights relate to the investments in the asset pool within BCPP Ltd as a ‘customer’. There will be a need for a collective forum to discuss common investor issues. It is proposed that this is through a Joint Committee consistent with public law requirements.
- 3.13 A Council Member will need to be appointed this Committee. To effectively represent the Fund, the Member of this Committee will need to be fully conversant with NYPF’s investment strategy and asset allocation strategy, performance expectations risk appetite.
- 3.14 It is acceptable that the two functions be undertaken by the same individual, but it is not necessary. It is up to each Partner Fund to decide who will fulfil each of these two roles.
- 3.15 It is proposed that the shareholder representative and the Joint Committee representative are determined in the normal manner by which Council (as administering authority of the NYPF) nominates representatives on external bodies.
- 3.16 The diagram below details the proposed governance structure of BCPP and how the various control groups are envisaged to interact with each other. These various elements of the governance structure are described below and in more detail in **Appendix 2**.



- 3.17 The focus of the Joint Committee will be on ‘investor’ issues of the Partner Funds (as distinct from shareholder issues). Investor rights relate to the investment in BCPP Ltd as governed by legal documents for each investment e.g. constitutive deed, application form, key investor information, prospectus and FCA handbook of rules and guidance. Investor rights cover such matters as the right to withdraw from the investments, investor reporting (including frequency and content) and investor voting rights.
- 3.18 The Joint Committee will formally be established by all of the Partner Funds signing the Inter Authority Agreement – a copy of the latest draft is attached at **Appendix 3**. This Agreement sets out the role, Terms of Reference and Constitution of the Committee. It also establishes an Officer Operations Group drawn from officers of administering authorities of the Pool to support the working of the Joint Committee with technical advice, as well as a secretariat to provide administrative support.
- 3.19 The Inter Authority Agreement also provides for one of the Partner Funds to act as Host Authority. In particular, the Authority that acts as Host Authority will be responsible for entering into contracts on behalf of the Joint Committee. This is necessary because the Joint Committee has no separate legal identity. In recognition of the fact that the Host Authority will take on liabilities and risk on behalf of all the Partner Funds, the Inter Authority Agreement contains indemnity clauses so that this liability and risk is shared. There is no expectation that the Joint Committee will enter into contracts to

any significant extent but it may, for example, need to commission specialist advice on occasion.

Teckal

- 3.20 As described in paragraph 3.2, the most appropriate way forward is considered to be the creation of a wholly owned Teckal compliant company, operating a fully regulated structure under the Financial Conduct Authority (FCA).
- 3.21 To ensure the Partner Funds can transfer their assets to and enter into contracts with BCPP Ltd without some form of competitive procurement (which seems wholly inappropriate given the purpose of the Pool) it will need to be “Teckal” compliant i.e. adhere to Regulation 12 of the Public Contracts Regulations 2015. As each Administrative Authority is a contracting authority for the purpose of the 2015 Regulations adherence to these public procurement rules is the individual responsibility of each of the individual Authorities, not the new company.
- 3.22 Under Regulation 12 of the Public Contracts Regulations 2015, contracts entered into between a local authority and a Teckal compliant company are exempt from the application of public procurement law where the following conditions are met:
- i. the contracting authority exercises control over the Teckal compliant company (either solely or jointly with other authorities) which is similar to that which it exercises over its own departments;
 - ii. more than 80% of the activities carried out by the Teckal company are carried out in the performance of tasks entrusted to it by the contracting authority or other bodies which the contracting authority controls; and
 - iii. the Teckal compliant company is not directly privately owned.
- 3.23 It is through the exercise of a number of shareholder reserved matters that the Councils demonstrate a controlling influence and therefore Teckal compliance. This element of the operation of the company is governed by a Shareholder's Agreement (a draft of which is attached at **Appendix 4**, and see **paragraphs 3.25** et al) which regulates the relationship between the Partner Funds as shareholders and between the Partner Funds collectively and the company. The Council, as administering authority, is being asked to authorise the North Yorkshire Pension Fund to enter into this Shareholder Agreement.
- 3.24 As BCPP Ltd will be a Teckal compliant company there will be many more matters reserved to the control of the shareholders acting collectively than would be the case in a normal company.
- 3.25 The exercise of these rights will be governed by the Articles of Association of the company and company law. This means that different arrangements from simple majority to unanimity can be attached to different types of decision.

Shareholder Agreement

- 3.26 The Shareholder Agreement (introduced in paragraph 3.22) identifies a number of shareholder reserved matters which can only be decided with the approval of either all of the shareholders (unanimous reserved matters) or a majority (defined as 75%) of the shareholders (shareholder majority reserved matters). The reserved matters are listed in Schedule 1 of the Shareholder Agreement. It is through these reserved decisions in particular that the Partner Funds will exercise a decisive influence over the strategic direction of BCPP Ltd.
- 3.27 The role of the Administering Authorities as shareholders will be to provide oversight and control of the operation of the Company and will include:
- approval of the Annual Business plan
 - approval of budgets, fee models, the overall cost base and cost apportionment
 - appointment and removal directors, including non-executive directors
 - approval of the senior executive remuneration policy
 - approval of significant capital requirements
 - approval of significant transactions (e.g. mergers and acquisitions)
 - approval of any new entrants to BCPP and the terms of entry
 - determination of exit terms, including notice period and exit treatment
 - approval of conflict of interest policy
 - review of the risk register
 - appointment of the auditor
- 3.28 Other key provisions of the Shareholders Agreement are:
- the Agreement will be governed by a number of shared objectives that are described in Schedule 2 of the Shareholder Agreement. These include that the Administering Authorities will pool their assets through BCPP Ltd to meet the Administering Authorities' pooling obligations
 - any Administering Authority may withdraw on giving not less than 12 months' notice to expire on 31 March in any year. On withdrawal, the exiting shareholder must pay outstanding sums owed to the company
 - on withdrawal (ie full withdrawal from the Pool and not withdrawal of part funds under management), the company will buy back the shares of an exiting shareholder (subject to having the necessary capital) and the remaining shareholders will be required to adjust the regulatory capital caused by the withdrawal
 - profits of BCPP Ltd lawfully available for distribution (after prudent consideration of the amounts required to be retained by the company) will first be used to reduce the Operating Fee (see paragraph 3.47) and then will be available for distribution to the shareholders unless the shareholders agree otherwise – further details to be worked up

- shareholders will use best endeavours to resolve disputes between themselves. If not resolved, they will be escalated with provision, ultimately, for binding arbitration
- if a shareholder is in material breach of the Shareholders Agreement and the breach is not remedied, the shareholder in breach is required to sell its A share back to the company and the B shares will be bought by the company (subject to having the necessary capital)
- the Shareholders Agreement may be terminated if all shareholders agree in writing, the company is wound up, such number of shareholders withdraw that the remaining shareholders inform BCPP Ltd that they are unable or unwilling to maintain the company's regulatory capital requirements, or the Board determine that the business of BCPP Ltd can no longer be carried on lawfully
- the company will provide information to the shareholders including quarterly financial and performance reports, annual accounts and an annual report of progress against the Strategic Plan

Articles of Association

- 3.29 In addition to the Shareholder Agreement the other main document governing the operation of BCPP Limited will be the Articles of Association (a draft of which is attached at **Appendix 5**). The main provisions of this document of which Members should be aware are set out below.
- 3.30 It is proposed that the Board of Directors will comprise of 3 Executive Directors and 3 Non-Executive Directors, one of which will be the Chairman. Each of these directors are required to be noted on the Financial Conduct Authority (FCA) application with some required to be designated with approved person status. Following accepted good governance, and to protect shareholder interests, it is proposed that the Chairman has the casting vote to ensure the non-executive Directors carry vote, should this be required.
- 3.31 No shareholder may transfer its shares (Class A or Class B) to any other person save to the company as part of a redemption of shares (for example on a withdrawal by that shareholder).
- 3.32 Meetings will be held in private, and once established there will be the minimum requirement for an annual shareholder meeting. However, as each shareholder will have more than 5% of the total shareholding they can call a meeting at any time (given the required notice period).
- 3.33 Subject to approval from the respective Administering Authorities, BCPP Limited will be owned by the 12 local authorities as Administering Authorities within the investment pool. Each authority will have 1 Class A voting share with equal voting rights. It should be noted that South Yorkshire Passenger Transport Pension Fund will have no shareholding or voting rights in the new

company. Currently operational control is delegated to South Yorkshire Pension Fund.

- 3.34 Given that the Council's involvement in the company is driven by the pooling requirements affecting the Pension Fund legal advice is that it is proposed that this share is held in the name of NYPF.
- 3.35 The duties and responsibilities of a shareholder mean that each Partner Fund has protection as it will have limited liability (subject to regulatory capital requirements).
- 3.36 The shareholder representative will be exercising the Council's rights in accordance with instructions rather than have any delegated authority. Appropriate support will be provided to ensure any matters of process, governance or conflict are appropriately addressed.
- 3.37 Generally as a shareholder there will be no involvement in day to day company operational matters, which are managed by the Board of Directors. The exercise and conduct of business by the Board is set out in Articles of Association, which will include consulting on key strategic and operational matters.

Constitution

- 3.38 To reflect the creation of the Joint Committee, and the shareholder responsibilities, the Constitution will need to be updated to reflect the amended Terms of Reference of the PFC.

Operational Arrangements

- 3.39 The aim of the BCPP pooling proposal is to meet the regulatory requirements to pool assets by collectively investing and to:
- deliver savings to the Partner Funds
 - improve governance by moving the asset management into a financially regulated entity
 - build capability and capacity to invest in infrastructure and other asset classes to improve the risk adjusted returns of partner Funds
 - through collaboration and consolidation of resource improve technical specialisms and resilience across Partner Funds
 - use the scale of the pool to more effectively utilise shareholder voting rights to drive corporate governance change in the companies the Funds invest in
- 3.40 BCPP Ltd will be responsible for managing investments in line with the investment strategy and asset allocation requirements as instructed by NYPF and the other Partner Funds. While there will be some changes required from the current processes, much will remain as is, i.e. instead of overseeing a range of external managers, the Pension Fund Committee will oversee a range of sub-funds managed by BCPP Ltd.

- 3.41 The PFC will therefore retain responsibility for setting the investment strategy and the asset allocation of the Fund. Other activity such as valuations, the setting of employer contributions and pensions administration will also remain at the local level.
- 3.42 The key change is therefore that responsibility for the appointment, monitoring and termination of investment managers will pass from the PFC to BCPP Ltd.
- 3.43 It is generally accepted that over 80% of investment performance is driven by the investment strategy and asset allocation, rather than manager selection.
- 3.44 The PFC will however retain control over decisions to change its contractual arrangements with investment managers to accommodate pooling, including the timing of those changes. Changes are expected to be actioned over an appropriate time to comply with pooling requirements, to coordinate with other Partner Funds to achieve optimal improvements in performance and costs. It is clearly expected that becoming a shareholder and the investment in BCPP that this will require, we will give a commitment in using the Pool for investments and it meets the need to demonstrate an approach to pooling as required by the Secretary of State. However the actual decision of how much to invest in funds managed by the BCPP will be done by the Pension Fund Committee at a later date. This issue will therefore be re-visited at a later stage when individual Pension Funds are asked to contract with the BCPP. It is expected that all BCPP Pension Funds will work to ensure that the Pool has a good understanding of its clients' investment wishes and needs thereby providing confidence along this journey.
- 3.45 There will inevitably need to be some compromises in the arrangements as the Council will be one voice amongst twelve. For example, in order to achieve benefits through economies of scale the number of sub-funds will need to be appropriate, i.e. not too many to lose these benefits but not too few to unduly restrict the asset allocation requirements of Partner Funds. To ensure the range of sub-funds meets NYPF's needs as far as possible, feedback has been provided by both Officers of the Fund and the Fund's Investment Consultant.
- 3.46 BCPP Ltd will be responsible for the actions of the internal investment teams and hiring / firing external investment managers with the objective of ensuring the performance of each of the sub-funds meets the requirements of the Partner Funds.
- 3.47 As an FCA regulated entity, BCPP Ltd will be required to operate under the Financial Services and Markets Act 2000 (FCA compliance) and the Corporate Governance Code, as well as local authority regulations.
- 3.48 BCPP Ltd will receive an Operator Fee from the Administering Authorities, which is intended to cover the Company's operating costs. The exact amount and the method of calculating the Fee have not yet been determined.
- 3.49 FCA regulated businesses are required to hold regulatory capital designed to support the solvency of the company. There are detailed rules governing the

minimum amount of regulatory capital required. The maximum regulatory capital that can be required is €10m and is based on assets under management. BCPP Ltd is expected to be at this maximum. It is proposed that this requirement is funded equally between the 12 Administering Authorities. The North Yorkshire Pension Fund's contribution is therefore likely to be in the region of £725,000 based on the Euro exchange rate at the time of writing of this report.

- 3.50 Contributions to regulatory capital can be made in one of two ways – either by way of equity (the purchase of shares in the company) or debt (by lending the money to the company). The Shareholder Agreement proposes that the regulatory capital is provided by all of the Administering Authorities by them acquiring a class of shares in the company (Class B shares) to the value of their contribution. There are two main reasons for this.
- 3.51 The first is that the Pension Fund that accepts as its members, the employees of BCPP Ltd, through an admission agreement, will not be allowed in law to make its contribution by way of a loan. The second is that because loans rank higher than equity on an insolvency, then in this very unlikely event, one or more Partner Funds would have priority over the others.
- 3.52 As these arrangements are solely for the purpose of pooling Pension Fund assets, which are attributable to the Fund's employers, it is proposed that the contribution is made from the Pension Fund rather than Council funds. This contribution will be held by BCPP Ltd and will earn a suitable rate of interest.

4.0 CONCLUSIONS

- 4.1 Following the Government's approval in December 2016 for BCPP to go ahead with pooling arrangements, each of the 12 administering authorities within the pool (that are to acquire a shareholding) will need to decide whether or not to formally commit to BCPP.
- 4.2 In anticipation of this, these authorities have been reviewing their respective governance arrangements and determining the necessary changes.
- 4.3 It is anticipated that the latest Full Council meeting of the 12 administering authorities will be on 21 March 2017 and that the necessary documents will be executed shortly thereafter.
- 4.4 The administering authorities forming the BCPP pool will then need to push forward with these proposals and set up the regulated asset management company BCPP Ltd, ensure its FCA registration, appoint staff (including TUPE transfer where appropriate), find a suitable location to operate from, and implement the other necessary arrangements to facilitate pooling such as the appointments of a depositary and custodian.

7.0 RECOMMENDATION

- 7.1 The Executive recommends to Council, as the administering authority for the North Yorkshire Pension Fund, that it meets the regulatory requirements to pool Pension Fund assets by:
1. agreeing to be a member of the Border to Coast Pensions Partnership and to adopt its arrangements, by:
 - i entering into the Inter-Authority Agreement (Appendix 3) between the Council and the Administering Authorities of the other Pool Funds
 - ii entering into the Shareholder Agreement (Appendix 4) between the Council and the Administering Authorities of the other Pool Funds and Border to Coast Pensions Partnership Limited
 - iii agreeing the Articles of Association to be adopted by Border to Coast Pensions Partnership Ltd (Appendix 5)
 - iv approving the establishment of the Border to Coast Pensions Partnership Joint Committee as a formal Joint Committee under section 102 of the Local Government Act 1972 of in accordance with and to carry out the functions as set out in the Inter-Authority Agreement (Appendix 3)
 2. approving the subscription by the North Yorkshire Pension Fund of 1 Class A voting share in the asset management company, Border to Coast Pensions Partnership Limited
 3. referring the nomination of the shareholder to the Executive.
 4. approving the subscription by the North Yorkshire Pension Fund for such number of Class B non-voting shares in the Border to Coast Pensions Partnership Limited as shall be necessary to ensure that the Council contributes by way of equity one twelfth of the minimum regulatory capital requirement of the company as determined in by the requirements of the Financial Conduct Authority
 5. appointing the Chair of the Pension Fund to represent the Council on behalf of the Fund at the Border to Coast Pensions Partnership Joint Committee meetings.
 6. authorising the Assistant Chief Executive - Legal & Democratic Services to make the consequential changes required to the Constitution to reflect these new arrangements.
 7. authorise the Assistant Chief Executive – Legal and Democratic Services in consultation with the Corporate Director – Strategic Resources to finalise the approval and execution, where required, of all legal documents necessary to give effect to the above decisions.

GARY FIELDING
Corporate Director – Strategic Resources
Central Services
County Hall
Northallerton

19 January 2017



Department for
Communities and
Local Government

Marcus Jones MP
Minister for Local Government

**Department for Communities and Local
Government**

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London SW1P 4DF

Tel: 0303 444 3460
Fax: 020 7828 4903
E-Mail: marcus.jones@communities.gsi.gov.uk

www.gov.uk/dclg

Cllr Denise Le Gal, Surrey
Cllr Sue Ellis, South Yorkshire
Cllr Doug McMurdo, Bedfordshire

On behalf of the participating funds listed at end

12 DEC 2016

Dear Councillors,

BORDER TO COAST PENSION PARTNERSHIP (BCPP): FINAL PROPOSAL

I would like to thank you and all the authorities involved in the proposed BCPP pool for your final proposal, which we discussed at our meeting on 24 November. I was glad to note your commitment to work together to secure benefits for all participating funds, building on your existing internal expertise. I appreciate the hard work and commitment from elected members and officers which the proposal represents, and welcome your determination to deliver on time.

It is now coming up to a year since we set the framework for reform of the investment function of the local government pension scheme, through the guidance and criteria for pooling published in November 2015. I am pleased that authorities across the scheme have responded to the challenge and come together to form partnerships of their own choosing based on a shared view of investment strategy. We do not underestimate the scale of the changes required, but the Government remains committed to pooling in order to deliver reduced costs while maintaining performance as well as to develop capacity and capability for greater investment in infrastructure.

I appreciate that overall costs are likely to rise in the early years, and that salaries are likely to be high for key senior roles within pool operators. But I consider that this is a price worth paying in order to achieve substantial savings, already estimated by the pools at £1-2 billion by 2033 or up to £200 million pa in the medium term. I am confident that as the reform beds in, there are further savings to be achieved.

I therefore expect every administering authority in England and Wales to participate in a pool. I also expect authorities to place all assets in their chosen pool, unless there is a strong value for money case for delay, taking into account the potential benefits across the pool, and to delegate investment manager selection to the pool. In addition my officials will be consulting with all pools on the potential to work with the Local Pensions Partnership to help ensure it delivers the full benefits of scale.

I must also underline that all bodies effectively undertaking collective investments will need to be authorised at the appropriate level by the Financial Conduct Authority (FCA). I appreciate the significant costs and effort required to secure authorisation. However, given the scale and complexity of the pools, and the substantial public funds involved, scheme members and the local taxpayers who underpin the scheme have a right to expect the high level of assurance which is provided by FCA authorisation. Individual funds will continue to be responsible for their investment strategies and asset allocation and will continue to require high standards of governance.

On the basis set out above I am pleased to confirm that I am content for you to proceed as set out in your final proposal. I hope you will continue to work closely with my officials, including on the concerns you raised relating to the Markets in Financial Instruments Directive II (MiFIDII).

Turning to the future, I appreciate there has been some delay this autumn, but I have no plans to extend the deadline for pools to become operational in April 2018. I will be reviewing progress of all the pools in spring and autumn 2017 and will expect to see a core team in place in spring 2017 and an application for Financial Conduct Authority authorisation, where not already in place, in autumn 2017. I look forward to seeing more detailed plans for delivering savings, and increasing your infrastructure investment in line with your stated ambition. I will also expect detailed plans for reporting, including on fees and net performance in each listed asset class against an index, standardised across the sector.

Your Sincerely,

MARCUS JONES MP

Participating funds:

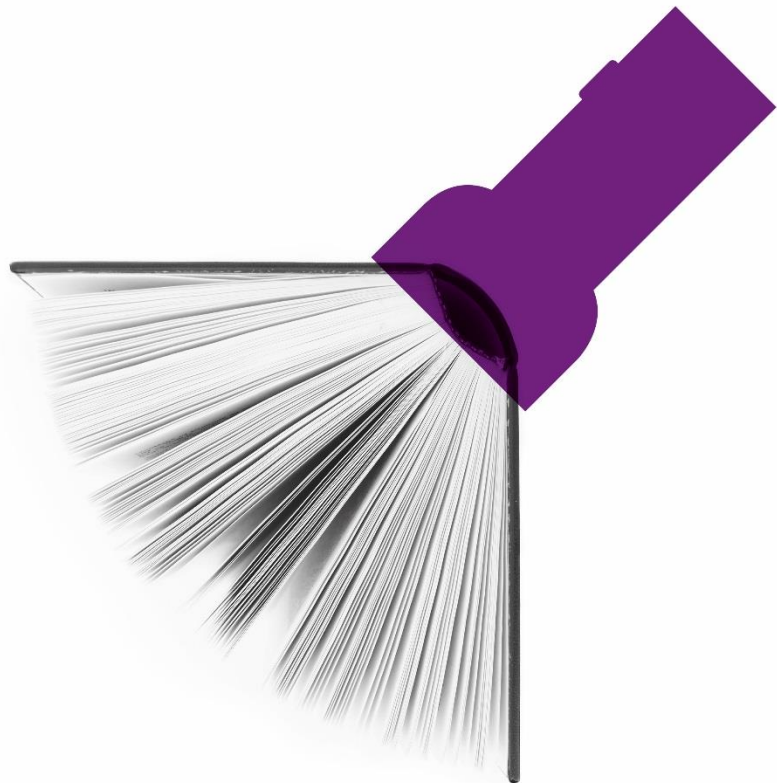
Bedfordshire
Cumbria
Durham
East Riding
Lincolnshire
North Yorkshire
Northumberland
South Yorkshire
South Yorkshire Integrated Transport Authority
Surrey Teesside
Tyne and Wear
Warwickshire

Border to Coast Pensions Partnership
Summary of Pool Governance Structure

[INSERT DATE] 2017

STRUCTURE NOTE

DRAFT BC



Border to Coast Pensions Partnership

Summary of Pool Governance Structure

This note has been prepared solely for the administering authorities participating in the Border to Coast Pensions Partnership Pool ("**BCPP Pool**") to provide a summary explanation of the structure of the BCPP Pool governance arrangements and may be circulated by authorities when seeking approval for the structure. We do not accept liability to any other person other than the authorities in respect of this advice note.

The BCPP Pool is the collective term for the range of investment vehicles (including an Authorised Contractual Scheme ("**ACS**") that may eventually be used to allow the administering authorities to pool their respective investments. The BCPP Pool will be run and operated by Border to Coast Pensions Partnership Limited (the "Company") which is a company wholly owned and controlled by the administering authorities.

This note is intended to be a summary of the BCPP Pool structure and the detailed and definitive provisions of the governance structure can be found in the following core documents:

- the Company's Articles of Association,
- the Shareholders' Agreement; and
- the Inter Authority Agreement (containing the BCPP Joint Committee's Terms of Reference and Constitution and the Terms of Reference for the Officer Operations Group and the Statutory Officers Group).

1. **Background**

- 1.1 We have been asked to provide a high level summary of the BCPP Pool governance structure, in particular setting out the roles of the structure's key bodies, including the Company, the Shareholder Representatives, the BCPP Joint Committee, the Officer Operations Group and the Statutory Officers Group).
- 1.2 Please note that each administering authority still retains its core duties and responsibilities as an LGPS administering authority in respect of its own fund. Administering authorities may need to review their current pension committee structures to see if they will need changing once the BCPP Pool is established and/or to deal with the transition period whilst assets are being moved over to the Pool.

In broad terms the governance structure is summarised in the following diagram:

Border to Coast Pensions Partnership

Summary of Pool Governance Structure

Border to Coast Pensions Partnership Limited

- 1.3 The Company is a private company limited by shares. It was incorporated in England and Wales under the Companies Act 2006 on [insert date] with registered number [insert number]. Its registered office is at [insert registered office]. The Company's constitution is contained in its Articles of Association which defines the responsibilities of the directors, the kind of business to be undertaken, and the means, along with the Shareholders' Agreement, by which the shareholders exert control over the Company and its board of directors.
- 1.4 The Company has been formed to act as an alternative investment fund manager to run and operate one or more collective investment vehicles (including an ACS) to allow the administering authorities to pool their respective investments. In due course the Company will become authorised by the Financial Conduct Authority. Unlike the Company, the ACS itself is not a separate legal entity but is a contractual arrangement.
- 1.5 The Company will be run by a Board of Directors which will comprise of a non-executive chair and two other non-executive directors and up to three executive directors. Directors are appointed (and can be removed) by agreement of all the administering authorities as shareholders. The directors have to produce an annual business plan including an annual budget for approval by all of the shareholders.
- 1.6 The Company will have twelve shareholders being, Bedford Borough Council, Cumbria County Council, Durham County Council, East Riding of Yorkshire Council, Lincolnshire County Council, Middlesbrough Borough Council, Northumberland County Council, North Yorkshire County Council, South Tyneside Council, South Yorkshire Pensions Authority (acting on behalf of itself and the Sheffield City Region Combined Authority), Surrey County Council and Warwickshire County Council. As such it will be a "controlled company" within the meaning of the Local Authorities (Companies) Order 1995.

2. Shareholder Representatives

- 2.1 Company shareholder meetings will be the forum for dealing with the shareholder rights of the twelve administering authorities as individual shareholders in the Company. This is distinct from the Company's Board of Directors and also from the BCPP Joint Committee (see below).
- 2.2 At company shareholder meetings each administering authority as shareholder exercises one vote. Certain major decisions (e.g. changes to the Articles of Association, rights in shares, buy-back of shares etc) which would have an effect on the shareholders' rights are usually required, through the Companies Act 2006, to be approved by the shareholders at a general meeting called by the directors of the Company.
- 2.3 The Shareholders' Agreement records the terms of the administering authorities' relationship with each other as shareholders and regulates certain aspects of the affairs and their dealings with the Company. The Agreement provides the framework for the administering authorities to act in a collaborative and coordinated way. To the extent that the Shareholders' Agreement conflicts with the terms of the Articles of Association then the Shareholders' Agreement prevails and the Articles may need to be amended accordingly.
- 2.4 In addition, the Shareholders' Agreement specifies the voting levels for various shareholder decisions. From a procurement perspective, it is important to retain sufficient control over the Company to address 'Teckal' issues. Very simply, if a contracting authority for the purposes of procurement law exercises the same control over a company as it exercises over its own departments, the company is considered in procurement terms to be an extension of the contracting authority. This means that the contracting authority does not need to follow a procurement process to legitimately obtain services from the company and it would be "Teckal compliant". "Teckal" is the name of the case which established this principle and which is now codified in the Public Contract Regulations 2015.
- 2.5 In particular, the Shareholders' Agreement provides that certain key strategic shareholder decisions require 100% or 75% approval of all the shareholders (as appropriate) before they can be approved at a shareholders' meeting. These are known as 'reserved matters' and are set out in the Shareholders' Agreement. Decisions requiring 100% approval include (without limitation):

Border to Coast Pensions Partnership

Summary of Pool Governance Structure

- 2.5.1 approving the Company's annual business plan including its annual budget;
 - 2.5.2 appointing and removing directors of the Company and their remuneration package
 - 2.5.3 admitting any new LGPS administering authority as a new member of the Company or as a new investor in the BCPP Pool;
 - 2.5.4 extending the activities of the Company outside the scope of its business;
 - 2.5.5 closing down any operation of the Company's business;
 - 2.5.6 altering any of the provisions of the Articles of Association or any of the rights attaching to the shares;
 - 2.5.7 allotting, reducing or cancelling any of the Company's share capital; and
 - 2.5.8 passing a resolution to wind up the Company.
- 2.6 Company shareholder meetings are subject to the requirements of the Company's Articles of Association, the terms of the Shareholders' Agreement and general company law. They are therefore subject to different rules to a BCPP Joint Committee meeting (for example in relation to areas such as access to information and voting rules) and for this reason shareholder meetings need to be kept separate from BCPP Joint Committee meetings.
- 2.7 It is intended that shareholders' meetings will be held at least annually which is the minimum legal requirement but may occur more often as required.
- 2.8 Because an authority cannot physically appear at a company shareholders' meeting, it needs to appoint a person to attend the meetings on its behalf and to cast its vote or state its view. Such a person is representing the authority and acting on instructions from the authority. It does not therefore matter legally whether that person is an officer or a member since no delegated powers are being exercised.
- 2.9 Any individual attending in this role needs to be briefed and instructed before attendance and to report back after each company shareholder meeting. In practice, if something occurs at the meeting itself which requires a shareholder decision or comment then the representative may have to exercise some discretion. That exercise of discretion should, so far as possible, reflect the known views of the authority.
- 2.10 The representative, if an elected member, may be the same individual that represents the authority on the BCPP Joint Committee. Ordinarily the interests of each administering authority as a shareholder in the Company ought to be completely aligned with the interests of the administering authority in its capacity as an investor/customer in the Pool, so conflicts of interest are unlikely to arise. However, if they do, having different individuals to represent the authority at company shareholders' meetings and on the BCPP Joint Committee may help to reduce the potential for conflicts of interest between views as a shareholder and views as an investor/customer and may assist in retaining clarity of the governance functions being carried out. However, this is a matter for each administering authority to decide and should common appointments be made an appropriate conflicts policy will be required.
- 3. BCPP Joint Committee**
- 3.1 The BCPP Joint Committee established under the Local Government Act 1972 will be the forum for discussing common investor/customer issues relating to the Company and the ACS.
- 3.2 Each administering authority, in addition to being a shareholder in the Company, will be an individual investor in the ACS (and any other pooled vehicles managed by the Company) and therefore each administering authority will have investor rights afforded by its contractual agreement(s) with the Company.
- 3.3 For example, in the case of the ACS, the contractual relationship between an administering authority and the Company is contained in a suite of key investor documents. This is made up

Border to Coast Pensions Partnership

Summary of Pool Governance Structure

of the constitutional deed, application form, key investor information, prospectus and FCA handbook of rules and guidance. The administering authority's investor rights are embedded in those documents and cover matters including the right to withdraw from the pooled vehicle, investor reporting (including frequency and content), obligations of the ACS manager to the investors and investor voting rights (for example, on proposed changes to the pooled vehicle).

3.4 There may be other arrangements creating other contractual relationships between an administering authority and the Company, for example equivalent documentation relating to other collective investment vehicles that the Company may operate and/or asset management agreements where the Company is managing assets that remain under the direct ownership of an administering authority.

3.5 The administering authorities are not delegating their key strategic asset allocation or other investment decision making powers or investor rights to the BCPP Joint Committee. Instead these will be retained for exercise by the individual administering authorities through their pension committees in the normal way, subject to consideration of any recommendations the BCPP Joint Committee may make.

3.6 The Terms of Reference and Constitution of the BCPP Joint Committee are set out in the Inter Authority Agreement. It is expected the BCPP Joint Committee will meet at least once a year a year (with support from the Officer Operations Group and the Statutory Officers Group) to consider and advise the administering authorities on investor issues such as:

3.6.1 service delivery by the Company and any action needed to be taken in relation to its performance; and

3.6.2 BCPP Pool related investment issues, for example adopting common approaches to investment policies (for example common social, environmental and corporate governance policies or policies on voting rights).

[INSERT ANY OTHER AREAS TO BE AGREED]

3.7 The BCPP Joint Committee would not make binding decisions on any of these issues but would make recommendations back to each administering authority for each authority to decide. Where any issues do need to be resolved by the BCPP Joint Committee, these will be decided by a majority vote of those present. Each administering authority represented on the Joint Committee exercises one vote.

3.8 Each authority will be represented on the BCPP Joint Committee by one of its elected members. In accordance with local government law principles, members cannot be mandated how to vote and therefore must use their own judgement when considering Joint Committee business. However, the views of the member's authority will be a factor in any decision.

3.9 Given the restricted the role of the BCPP Joint Committee, alternative and less formal arrangements to a joint committee structure could have been considered. However, a joint committee structure established under the Local Government Act 1972 provides a tried and tested structure that delivers a clear and transparent separation of shareholder matters and investor/customer matters.

4. **Officer Operations Group**

4.1 The Group will be made up of an officer from each administering authority (such as a pension fund officer). The Group is not a legal entity but a working group of officers. The Terms of Reference for the Group are set out in the Inter Authority Agreement confirming how the Group will be comprised, operate and be resourced and funded.

4.2 As this is a working group of officers, no statutory functions can be delegated to the Group. The role of the Group is to:

4.2.1 work with the BCPP Joint Committee to support the functions of the BCPP Joint Committee as set out in the BCPP Joint Committee's Terms of Reference;

Border to Coast Pensions Partnership

Summary of Pool Governance Structure

- 4.2.2 provide a central resource for advice, assistance, guidance and support for the BCPP Joint Committee (and also if requested for the administering authorities as a collective group of investors in the BCPP Pool);
- 4.2.3 provide technical support at meetings of the BCPP Joint Committee, for example by proving and delivering performance management reports for the Joint Committee on all aspects relating to the provision of services by the Company; and
- 4.2.4 act as a conduit for the BCPP Joint Committee to communicate back to the respective administering authorities and/or direct to the Company as appropriate.

5. **Statutory Officers Group**

- 5.1 The Statutory Officers Group will be made up of one or more statutory officers from each administering authority, e.g. the section 151 officer and/or monitoring officer. The Statutory Officers Group will support the BCPP Joint Committee, the Officer Operations Group and the shareholders from the perspective of the administering authorities.
- 5.2 Like the Officer Operations Group, the Statutory Officers Group is not a legal entity but a working group of officers. The Terms of Reference for the Group are set out in the Inter Authority Agreement confirming how the Group will be comprised, operate and be resourced and funded.

Eversheds LLP

[INSERT] 2017

Privileged and confidential

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Revised draft following pool call on 5th December 2016

Revised draft following pool meeting on 12th December 2016

Revised draft from Eversheds following consideration of Squires comments

Revised draft following review by David Hayward and Gary Delderfield.

SPB comments 22 December 2016

Eversheds comments 23 December 2016

Comments from Squires 2nd January 2017

Amendments by Eversheds following meeting on 12th January 2017

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Dated: 2017

- (1) BEDFORD BOROUGH COUNCIL
- (2) CUMBRIA COUNTY COUNCIL
- (3) DURHAM COUNTY COUNCIL
- (4) THE EAST RIDING OF YORKSHIRE COUNCIL
- (5) LINCOLNSHIRE COUNTY COUNCIL
- (6) MIDDLESBROUGH BOROUGH COUNCIL
- (7) NORTHUMBERLAND COUNTY COUNCIL
- (8) NORTH YORKSHIRE COUNTY COUNCIL
- (9) THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE
- (10) SOUTH YORKSHIRE PENSIONS AUTHORITY
- (11) SURREY COUNTY COUNCIL
- (12) WARWICKSHIRE COUNTY COUNCIL

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

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BETWEEN

- (1) **Bedford Borough Council**, of Borough Hall, Cauldwell Street, Bedford, MK42 9AP;
- (2) **Cumbria County Council**, of The Courts, Carlisle, Cumbria, CA3 8NA;
- (3) **Durham County Council**, of County Hall, Durham, DH1 5UE;
- (4) **The East Riding Of Yorkshire Council**, of County Hall, Beverley HU17 9BA;
- (5) **Lincolnshire County Council**, of County Offices, Newland, Lincoln, LN1 1YL;
- (6) **Middlesbrough Borough Council**, of PO Box 340, Middlesbrough, TS1 2XP;
- (7) **Northumberland County Council**, of County Hall, Morpeth, Northumberland, NE61 2EF;
- (8) **North Yorkshire County Council**, of County Hall, Northallerton, North Yorkshire, DL7 8AL;
- (9) **The Council of the Borough of South Tyneside**, of Town Hall and Civic Offices, Westoe Road, South Shields, Tyne and Wear, NE33 2RL;
- (10) **South Yorkshire Pensions Authority**, of 18 Regent Street, Barnsley, S70 2HG (acting on behalf of itself and Sheffield City Region Combined Authority);
- (11) **Surrey County Council**, of County Hall, Penrhyn Road, Kingston upon Thames, KT1 2DN; and
- (12) **Warwickshire County Council**, of PO Box 3, Shire Hall, Warwick, CV34 4RL

together called "the Authorities"

BACKGROUND

WHEREAS

- (A) The Authorities are each administering authorities within the Local Government Pension Scheme and within the meaning of the Local Government Pension Scheme Regulations 2013. They each administer, maintain and invest their own respective funds within the LGPS in accordance with those Regulations and the LGPS Investment Regulations.
- (B) The Authorities are the sole shareholders in Border to Coast Pensions Partnership Limited a controlled company within the meaning of the Companies Order. They have separately entered into the Shareholders Agreement to record the terms of their relationship with each other as shareholders in relation to Border to Coast Pensions Partnership Limited and to regulate certain aspects of the affairs and their dealings with Border to Coast Pensions Partnership Limited.
- (C) The Authorities have decided to enter into this Agreement in order to establish governance arrangements relating to the establishment of Border to Coast Pensions Partnership Limited as an entity to act as an alternative investment fund manager to run and operate one or more collective investment vehicles to allow the administering authorities to pool their respective investments.
- (D) The Authorities are local authorities within the meaning of the Local Government Act 1972 and have agreed to establish and participate in a Joint Committee known as the Border to Coast Pensions Partnership Joint Committee which will be responsible for delivery of the Pool operation. The Authorities have entered into this Agreement in reliance on the rights

given to local authorities to undertake administrative arrangements of this nature in sections 101, 102, 103, 112 and 113 of the Local Government Act 1972 and the Regulations made under these Acts; together with the general power within section 2 of the Localism Act 2011 and the supporting provisions within section 111 Local Government Act 1972.

OPERATIVE PROVISIONS

IT IS HEREBY AGREED AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

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

"ACS"	an authorised contractual scheme within the meaning of section 235A of the Financial Services and Markets Act 2000
"Agreement"	this Agreement
"Agreement Personal Data"	the Personal Data which is processed by the Authorities pursuant to this Agreement
"Authorities"	(1) at the Commencement Date and until such time as an Authority withdraws from this Agreement the authorities who are parties to this Agreement and (2) after the withdrawal of an Authority from this Agreement those authorities who remain parties to this Agreement and (3) from such time as another authority becomes party to this Agreement that authority and the other authorities who are parties to this Agreement
"BCPP"	and each an "Authority" Border to Coast Pensions Partnership Limited a company incorporated in England and Wales (registered number [●]) and wholly owned by the Authorities
"Business Days"	any day which is not a Saturday a Sunday or a Bank Holiday
"Commencement Date"	the date of this Agreement
"Companies Order"	The Local Authorities (Companies) Order 1995
"Constitution"	the Constitution of the Joint Committee set out at Schedule 2
"Data Controller"	has the same meaning as given to it under the Data Protection Legislation
"Data Processor"	has the same meaning as given to it under the Data Protection Legislation
"Data Protection Legislation"	means all privacy laws applicable to the personal data which is Processed under or in connection with this Agreement, including, where applicable, EU Directive 95/46/EC, 2002/58/EC, and the GDPR (amongst others) as implemented by the applicable local laws or as directly applicable, and all

regulations made pursuant to and in relation to such legislation together with all codes of practice and other guidance on the foregoing issued by any relevant Data Protection Authority, all as amended, updated and/or replaced from time to time

"DPA"

Data Protection Act 1998, as amended, updated and/or replaced from time to time.

"Exempt Information"

any information or class of information relating to this Agreement which may be:

- exempt from disclosure under the Freedom of Information Act 2000 (as updated, amended, or replaced from time to time); or
- excepted from disclosure under the Environmental Information Regulations 2004 (as updated amended, or replaced from time to time)
- exempt from disclosure under section 100I and Schedule 12A of the Local Government Act 1972. .

"FOI Legislation"

the Freedom of Information Act 2000 and subordinate legislation made under this, or the Environmental Information Regulations 2004 together with all codes of practice and other guidance on the foregoing issued by the Information Commissioner's Office, all as amended, updated and/or replaced from time to time

"GDPR"

means the General Data Protection Regulation as set out in Regulation (EC) 2016/679 which comes into force in the UK on 25 May 2018 and as may (in respect of the UK) be replaced, amended and or updated from time to time

"Host Authority"

the Authority referred to in Clause 7 hereof

"Information Request"

a request for information under FOI Legislation

"Joint Committee"

the statutory Joint Committee of elected members from the Authorities established by this Agreement

"LGPS"

the Local Government Pension Scheme in England and Wales

"LGPS Investment Regulations"

The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016

"Officer Operations Group"

a group of officers employed by the Authorities who will undertake the tasks described in Schedule 3

"Personal Data"

as defined in the Data Protection Legislation

"Pool"	the collective term for the one or more collective investment vehicles run and operated by Border to Coast Pensions Partnership Limited to allow the administering authorities to pool their respective investments
"Process" and other derivations such as "Processed" and "Processing"	means any use of Personal Data. For the avoidance of doubt, this includes, without limitation, storing, accessing, reading, using, copying, printing, revising, deleting, disclosing, transferring or otherwise using Personal Data;
"Secretary to the Joint Committee"	the officer appointed in accordance with Clause 7 hereof
"Section 151 Officer"	the officer designated by a local authority as the person responsible for the proper administration of its financial affairs, as required by section 151 of the Local Government Act 1972
"Shared Objectives"	the objectives set out in Schedule 4
"Shareholders Agreement"	the agreement between the Authorities which records the terms of their relationship with each other as shareholders in relation to the Pool and which regulates certain aspects of the affairs and their dealings with BCCP
"Terms of Reference"	the Terms of Reference of the Joint Committee set out at Schedule 1
"Withdrawing Authority"	an Authority which has given notice in accordance with Clause 11 of this Agreement

- 1.2 references to the background section, clauses and Schedules are to the background section and clauses of and schedules to this Agreement and references to paragraphs are to paragraphs of the relevant Schedule;
- 1.3 the Schedules form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement will include the Schedules;
- 1.4 the background section and all headings are for ease of reference only and will not affect the construction or interpretation of this Agreement;
- 1.5 unless the context otherwise requires:
- 1.5.1 references to the singular include the plural and vice versa and references to any gender include every gender; and
 - 1.5.2 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);

- 1.6 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended extended, consolidated, re-enacted and/or replaced and in force from time to time;
- 1.7 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.8 the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word "other" or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;
- 1.9 references to "in writing" or "written" are to communication effected by post and email or any other means of reproducing words in a legible and non-transitory form (but not fax);
- 1.10 an obligation on a party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that party; and
- 1.11 unless expressly stated otherwise, all obligations, representations and warranties on the part of two or more persons are (unless stated otherwise) entered into, given or made by such persons severally.

2. **TERM**

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

3. **SHARED OBJECTIVES**

- 3.1 The Authorities agree so far as reasonably possible to pursue the Shared Objectives.

4. **GOVERNING PRINCIPLES**

- 4.1 Each of the Authorities agrees that they will:
- 4.1.1 Ensure they are properly represented on the committees, working parties and other bodies provided for by this Agreement.
 - 4.1.2 Commit to provide agreed resources within agreed timescales; and
 - 4.1.3 Involve and inform the other Authorities of developments they are pursuing elsewhere which are relevant to BCPP and will share the learning and benefits thereof.

5. **ESTABLISHMENT OF A JOINT COMMITTEE**

- 5.1 In exercise of their powers under sections 101(4) and 102(4) of the Local Government Act 1972, the Authorities hereby create a Joint Committee to be known as the BCPP Joint Committee with effect from the Commencement Date.
- 5.2 The purpose of the Joint Committee shall be to undertake the activities set out in the Terms of Reference.
- 5.3 The Joint Committee shall operate and conduct its business in accordance with the terms of this Agreement including the Constitution and the Terms of Reference and may create sub-committees and working groups to support its role including an Officer Operations Group.

6. **GOVERNANCE**

6.1 Each of the Authorities shall each ensure that it makes any changes to its own constitution as are necessary to facilitate the operation of this Agreement.

7. **HOST AUTHORITY AND OFFICER GROUPS**

7.1 The Joint Committee will from time to time designate one of the Authorities to act as Host Authority on behalf of the Joint Committee for the purposes of entering into contracts and any other BCCP related activity where a legal persona is required to act.

7.2 The Host Authority will propose a budget for the operation of the Joint Committee for approval by the Joint Committee.

7.3 The Authorities will together and equally indemnify the Host Authority in respect of any claims, liabilities and costs incurred by virtue of its role as Host authority when acting on behalf of the Authorities together.

7.4 In accordance with Schedule 2 the Joint Committee will designate an officer employed by one of the Authorities to be the Secretary to the Joint Committee.

7.5 The Officer Operations Group will provide support to the Joint Committee in accordance with the Group's Terms of Reference making arrangements and engaging on behalf of the Joint Committee with BCPP.

8. **COST SHARING**

8.1 Subject to clause 8.2 costs incurred in the operation of the Joint Committee (including the costs of officers providing support to the Joint Committee through the Officer Operations Group in accordance with this Agreement) will be borne by the Authority incurring them.

8.2 Costs incurred by the Host Authority in providing secretariat services to the Joint Committee and any other costs incurred by the Host Authority on behalf of the Joint Committee in its capacity as lead authority will be shared equally between the Authorities.

9. **TERMS OF REFERENCE**

9.1 The Joint Committee will meet from time to time (with support from the officers) to discuss and form a common view on the matters within the Terms of Reference

9.2 The Joint Committee shall not make binding decisions on these issues but may make recommendations to each Authority to individually determine.

10. **VARIATION OF AGREEMENT**

10.1 Any of the Authorities may request a variation to this Agreement by making such a request in writing to the Secretary to the Joint Committee or his or her nominee.

10.2 The Secretary to the Joint Committee or his or her nominee shall circulate the request to each of the Authorities within 10 Business Days of receipt of the request for consideration and approval by the Authorities.

10.3 If the Authorities approve the variation then the Secretary to the Joint Committee or his or her nominee shall arrange for the preparation of an appropriate deed of variation to this Agreement to be prepared for execution by all Authorities and such change shall only take effect upon completion of that deed and the costs associated with the preparation of such deed of variation shall be shared equally between the Authorities.

10.4 If one of the Authorities does not approve the variation then the variation to this Agreement shall not occur.

11. **WITHDRAWAL FROM THIS AGREEMENT**

11.1 An Authority may withdraw from this Agreement in accordance with the following procedure:

11.1.1 Any Authority which wishes to withdraw from this Agreement shall give not less than twelve months written notice to expire on 31st March next following to the Secretary to the Joint Committee of its intention to do so. The Secretary to the Joint Committee or his or her nominee shall consult the Authorities upon which such notice has been served giving due consideration to:

11.1.1.1 any loss of funding arising from such withdrawal and including any non-payment, clawback or repayment of such funding;

11.1.1.2 any other loss, liability, damage, claim or expense;

which would be incurred by the Authorities upon which notice has been served by reason of such withdrawal from this Agreement.

11.2 Should a Authority cease to be a shareholder in or to be contractually bound to Border to Coast Pensions Partnership Limited then it shall be treated as having given notice of withdrawal under the provisions of Clause 11.1 hereof save that such notice shall have immediate effect.

11.3 An Authority wishing to withdraw from this Agreement undertakes as a condition of such withdrawal to make, prior to withdrawal, such reasonable payment or payments which fairly reflect the actual losses caused by or anticipated as a result of the withdrawal as shall be determined by the other Authorities and no notice under this **clause 11** shall take effect unless and until such payment has been agreed.

11.4 Each Authority reserves the right to recover from any Withdrawing Authority the costs of any claims, costs, expenses, losses or liabilities of any nature or which have been caused by any act or omission of the Withdrawing Authority in connection with this Agreement and which are discovered after the withdrawal from this Agreement.

12. **TERMINATION OF THIS AGREEMENT**

12.1 The Authorities agree that this Agreement may be terminated upon terms agreed by all Authorities.

12.2 Upon termination of this Agreement the Authorities agree that the Joint Committee shall cease to exist.

12.3 Notwithstanding the termination of this Agreement the Authorities each agree to do all such acts and things and execute all such documents as each of them reasonably requires.

13. **DISPUTE RESOLUTION**

13.1 The Authorities undertake and agree to pursue a positive approach towards dispute resolution which seeks (in the context of this joint working arrangement) to identify a solution at the lowest operational level that is appropriate to the subject of the dispute and which avoids legal proceedings and maintains a strong working relationship between the Authorities.

13.2 In the event of any dispute or disagreement arising out of or in connection with this Agreement or any breach thereof ("a Dispute") an Authority may serve notice upon the other setting out brief details of the Dispute that has arisen ("Notice of Dispute") and the Notice of Dispute shall in the first instance be considered by the section 151 officers of the relevant Authorities or such other person as the section 151 officer may direct, which shall, acting in good faith, attempt to resolve such dispute.

- 13.3 Where the Section 151 officers are unable to resolve such dispute within a period of 28 days or where in the opinion of the Section 151 officers such dispute would be more effectively resolved in another forum the Section 151 officers may refer such dispute to a suitably qualified and independent person as may be recommended by the section 151 officers and to be agreed by the Authorities which are in dispute or in the event of failure within a period of 28 days to agree on such appointment a person nominated by the President of the Law Society who shall act as an expert.
- 13.4 Where a dispute is referred to a person appointed under clause 13.3 hereof that person shall determine the procedure and timetable for resolution of the said dispute at his or her absolute discretion and the decision of that person shall be binding on the Authorities.
- 13.5 For the avoidance of doubt, this **clause 13** applies only to disputes between the Authorities and does not apply to any dispute between the Authorities and BCPP.

14. **NOTICES**

- 14.1 Any notice or other communication given under or in connection with this Agreement will be in writing, marked for the attention of the specified representative of the party to be given the notice or communication and:
- 14.1.1 sent to that party's address by pre-paid first class post or mail delivery service providing guaranteed next working day delivery; or
- 14.1.2 delivered to or left at that party's address (but not, in either case, by one of the methods set out in **clause 14.1**).
- 14.2 The address and representative for each Authority are set out below and may be changed by that party giving at least 10 Business Days' notice in accordance with this **clause 14**.

Bedford Borough Council

Borough Hall, Cauldwell Street, Bedford, MK42 9AP

For the attention of: [●]

Cumbria County Council

The Courts, Carlisle, Cumbria, CA3 8NA

For the attention of: [●]

Durham County Council

County Hall, Durham, DH1 5UE

For the attention of: [●]

The East Riding of Yorkshire Council

County Hall, Beverley HU17 9BA

For the attention of: Director of Corporate Resources

Lincolnshire County Council

County Offices, Newland, Lincoln, LN1 1YL

For the attention of: [●]

Middlesbrough Borough Council

PO Box 340, Middlesbrough, TS1 2XP

For the attention of: [●]

Northumberland County Council

County Hall, Morpeth, Northumberland, NE61 2EF

For the attention of: [●]

North Yorkshire County Council

County Hall, Northallerton, North Yorkshire, DL7 8AL

For the attention of: [●]

The Council of the Borough of South Tyneside

Town Hall and Civic Offices, Westoe Road, South Shields, Tyne and Wear, NE33 2RL

For the attention of: [●]

South Yorkshire Pensions Authority

18 Regent Street, Barnsley, S70 2HG

For the attention of: [●]

Surrey County Council

County Hall, Penrhyn Road, Kingston upon Thames, KT1 2DN

For the attention of: [●]

Warwickshire County Council

PO Box 3, Shire Hall, Warwick, CV34 4RL

For the attention of: [●]

14.3 Any notice or communication given in accordance with **clause 14.1** will be deemed to have been served:

14.3.1 if given as set out in **clause 14.1**, at 9.00am on the 2nd Business Day after the date of posting; and

14.3.2 if given as set out in **clause 14.1.1**, at the time the notice or communication is delivered to or left at that party's address,

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

14.4 For the purposes only of this **clause 14**, references to time of day are to the time of day at the address of the recipient parties referred to in **clause 14.1**.

14.5 To prove service of a notice or communication it will be sufficient to prove that the provisions of **clause 14.1** were complied with.

15. **INFORMATION AND CONFIDENTIALITY**

15.1 Whilst acknowledging that meetings of the Joint Committee will ordinarily be open to the public, the Authorities shall otherwise keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matter relating to the Agreement.

15.2 **Clause 15.1** shall not apply to:

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

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

15.2.3 Any disclosure to enable a determination to be made under **clause 13** (Dispute Resolution);

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

15.2.5 Any disclosure of information which is already lawfully in the possession of the receiving Authority prior to its disclosure by the disclosing Authority;

15.2.6 Any disclosure by an Authority to a department, office or agency of the Government; and

15.2.7 Any disclosure for the purpose of the examination and certification of an Authority's accounts.

15.3 Save for in relation to disclosures made under the FOI Legislation which cannot be made subject to imposed conditions, where disclosure is permitted under **clause 14.2**, the recipient of the information shall be placed under the same obligation of confidentiality as that contained in this Agreement by the disclosing Authority.

16. **DATA PROTECTION**

- 16.1 The Authorities shall be Data Controllers of the limited Personal Data which may be Agreement Personal Data. As such, the Authorities shall each comply with their obligations under the Data Protection Legislation. In doing so the Authorities shall:
- 16.1.1 to the extent required, maintain a valid and up to date registration or notification and/or maintain up to date documentation covering any Processing of Agreement Personal Data to be performed pursuant to this Agreement;
 - 16.1.2 only undertake Processing of Agreement Personal Data reasonably required in connection with the operation of this Agreement and only as may be lawful under the Data Protection Legislation;
 - 16.1.3 not transfer any Agreement Personal Data to any country or territory outside the European Economic Area, notwithstanding their ability to do so under the Data Protection Legislation, save for any export of Agreement Personal Data which is compliant with the Data Protection Legislation and which is necessary for the use of core IT services and systems operated by the Authorities;
 - 16.1.4 implement appropriate technical and organisational measures to prevent unauthorised or unlawful Processing of Agreement Personal Data and against the accidental loss, or destruction of, or damage to Agreement Personal Data;
 - 16.1.5 promptly notify the other Authorities if they become aware of any actual or suspected, threatened or 'near miss' incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of or access to the Agreement Personal Data Processed which is reasonably likely to result in risks to the rights and freedoms of natural persons, pursuant to this Agreement;
 - 16.1.6 use their best endeavours to restore or retrieve any personal data which is unlawfully or accidentally lost, destroyed, damaged, corrupted or made unusable;
 - 16.1.7 keep full, up-to-date and accurate records of any processing of Personal Data carried out pursuant to this Agreement;
 - 16.1.8 promptly respond to any request from one of the other Authorities to amend, delete, or otherwise process Personal Data in response to any request from a data subject; and
 - 16.1.9 not do anything (whether by act or omission) which would cause the other Authorities to be in breach of their obligations as Data Controllers of the Agreement Personal Data under the Data Protection Legislation.
- 16.2 The Authorities shall not disclose Personal Data to any third parties other than in compliance with the Data Protection Legislation, particularly:
- 16.2.1 in response to a data subject access request;
 - 16.2.2 to employees and contractors to whom such disclosure is necessary in order to comply with their obligations under this Agreement; or
 - 16.2.3 to the extent required to comply with a legal obligation.
- 16.3 To the extent that any Authority acts as a Data Processor for and on behalf of the other Authorities in relation to the Agreement Personal Data Processed pursuant to this Agreement, the Data Processor shall:
- 16.3.1 only Process that Agreement Personal Data on the instructions of the Data Controller(s);

- 16.3.2 Process that Agreement Personal Data in accordance with their obligations under the Data Protection Legislation (to the extent applicable);
 - 16.3.3 implement appropriate technical and organisational measures to prevent unauthorised or unlawful Processing of that Agreement Personal Data and against the accidental loss, or destruction of, or damage to that Agreement Personal Data;
 - 16.3.4 notify the Data Controller(s) as soon as possible in the event of any actual or suspected loss, alteration or disclosure of that Agreement Personal Data in breach of this Agreement, or the Data Protection Legislation;
 - 16.3.5 provide such reasonable assistance to the Data Controller(s) in the event of any:
 - 16.3.5.1 request from individuals in relation to their Agreement Personal Data (including a data subject access request, a request to correct or stop processing any Personal Data);
 - 16.3.5.2 request from the Information Commissioner's Office in relation to any Processing of that Agreement Personal Data including in relation to any complaint, data subject access request and/or , data security incident;
 - 16.3.6 subject to the Data Controller entering into appropriate non-disclosure agreements and on reasonable request and notice, provide the Data Controller with access to their premises during regular business hours in order to inspect whether the Data Processor is complying with its obligations pursuant to this Agreement. Additionally, the Data Processor shall, at no cost to the Data Controller, take such further steps as may be reasonably necessary in the opinion of the Data Controller to permit the Data Controller to obtain an accurate and complete assessment of the Data Processor's compliance with its obligations under this Agreement and, in particular, this clause 16;
 - 16.3.7 not transfer any Agreement Personal Data outside the European Economic Area, unless this is done with the express written agreement of the Data Controller, or where it is necessary for the use of core IT services and systems operated by the Authorities, this is notified to the Data Controller and is undertaken in compliance with Data Protection Legislation; and
 - 16.3.8 on termination of this Agreement, return all the Agreement Personal Data to the Data Controller(s) and securely delete and/or destroy any copies of the Agreement Personal Data which is Processed by the Data Processor pursuant to this Agreement unless applicable laws permit retention of the Agreement Personal Data, in which case the relevant Authority(s) agree(s) it (or they) shall retain the Agreement Personal Data securely and only for as long as strictly necessary in its capacity as a Data Controller.
- 16.4 The Authorities acknowledge that the Data Protection Legislation will include the GDPR from its entry in to force on 25 May 2018. In order to address those upcoming changes:
- 16.4.1 the Authorities shall during the first twelve (12) months of this Agreement, develop, draft and agree a protocol which will document and provide further detail regarding the manner in which the Agreement Personal Data will be Processed in order to meet the requirements of the GDPR; and
 - 16.4.2 the Authorities note that the provisions of this Agreement do not necessarily comply with the GDPR requirements. As such, the Authorities agree to review and (to the extent necessary) revise the terms of this Agreement as may be appropriate in the six (6) months preceding the start date of the GDPR.

17. **FREEDOM OF INFORMATION**

- 17.1 The Authorities recognise that each Authority is a public authority as defined by FOI Legislation and therefore recognise that information relating to this Agreement may be the subject of an Information Request which shall be considered in accordance with this Clause 17.
- 17.2 The Authorities shall assist each other in complying with their obligations under FOI Legislation, as they relate to Information Requests made in relation to this Agreement, including but not limited to assistance without charge in gathering information to respond to an Information Request relating to this Agreement.
- 17.3 Where an Authority receives an Information Request in relation to this Agreement and another Authority holds information or records on behalf of that Authority, upon request, such other Authority agrees to provide the first Authority with a copy of all such information related to the Information Request, in the form that the first Authority reasonably requires within five business days (or such other period as the first Authority may reasonably specify) of the first Authority's request.
- 17.4 Each Authority, as a separate public authority, shall in its absolute and sole discretion, decide:
- 17.4.1 whether the Information Request is valid under the FOI Legislation, as well as all other considerations relevant in the assessment of an Information Request under the FOI Legislation, such as any considerations (as may be applicable) regarding the cost of complying with a request or any charges for responding to a request, whether the request is repeated, vexatious or manifestly unreasonable and any other relevant considerations;
 - 17.4.2 whether the information requested in an Information Request is relevant to the Agreement;
 - 17.4.3 whether, if the Information Request does relate to the Agreement, whether the information is Exempt Information;
 - 17.4.4 where appropriate, whether or not in all circumstances of the case the public interest in maintaining any exemption outweighs the public interest in disclosing the requested information ; and
 - 17.4.5 whether the information requested in the Information Request is to be disclosed or not or proactively disclosed regardless of whether an Information Request has been received or not.
- 17.5 Where an Authority receives an Information Request for information about the Agreement which may be Exempt Information and which refers to one or more of the Authorities, then where reasonably practicable take reasonable steps prior to disclosure of such information to:
- 17.5.1 circulate the Information Request to the other Authorities and invite the other Authorities to make representations to the Authority which received the Information Request as to whether or not the information is Exempt Information as soon as reasonably possible, ensuring that such submissions are made in good time so as to enable the Authority which received the Information Request to comply with their obligations under the FOI Legislation; and
 - 17.5.2 in good faith, consider any representations raised by the other Authorities when deciding whether to disclose Exempt Information, but the Authority which receives the Information Request shall not be obliged to accept or agree to the representations which are made by the other Authorities.

17.6 The Authorities acknowledges that (notwithstanding the provisions of this **clause 17**) the Authority which received the Information Request may, under the FOI Legislation or acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "Code"), be obliged under the FOI Legislation to disclose information concerning this Agreement or the other Authorities:

17.6.1 in certain circumstances without consulting with the other Authorities; or

17.6.2 following consultation with the other Authorities and having taken their views into account,

provided always that where clause 17.5.1 above applies the Authority which receives the Information Request, take reasonable steps wherever practicable to draw this to the attention of the other Authorities prior to any disclosure.

17.7 The Authorities acknowledge and agree that an Authority will not be liable to the other Authority for any loss, damage, harm or detrimental effect arising from or in connection with the disclosure of information in response to an Information Request.

18. **EQUAL OPPORTUNITIES**

18.1 Each of the Authorities is subject to public law duties under equalities legislation and agree to operate the Agreement in such a way as to promote equality of opportunity, good race relations and to prevent unlawful discrimination on the grounds of race, disability, gender, age, religion or belief, and sexual orientation.

19. **RELATIONSHIP OF AUTHORITIES**

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

20. **COUNTERPARTS**

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

21. **SEVERANCE**

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

22. **RIGHTS OF THIRD PARTIES**

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

23. **GOVERNING LAW**

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

24. **JURISDICTION**

24.1 Each party agrees that the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement (including in relation to any non-contractual obligations).

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

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

BEDFORD BOROUGH COUNCIL

in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

CUMBRIA COUNTY COUNCIL

in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

THE COUNTY COUNCIL OF DURHAM

in the presence of:

**Authorised Sealing Officer
(A permanent Officer of Durham)**

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

THE EAST RIDING OF YORKSHIRE COUNCIL

in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

LINCOLNSHIRE COUNTY AUTHORITY

in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

MIDDLESBROUGH BOROUGH COUNCIL

in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

NORTHUMBERLAND COUNTY COUNCIL

in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

NORTH YORKSHIRE COUNTY COUNCIL

in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

SOUTH TYNESIDE COUNCIL

in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

SOUTH YORKSHIRE PENSIONS AUTHORITY

in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

SURREY COUNTY COUNCIL

in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

WARWICKSHIRE COUNTY COUNCIL

in the presence of:

Authorised Officer

SCHEDULE 1

Terms of Reference of the Joint Committee

1. The primary purpose of the Joint Committee is to exercise oversight over the investment performance and operation of the investment vehicles comprised in the BCPP Pool.
2. The Joint Committee will provide effective engagement with the Authorities as the Pool vehicles are established and ultimately operated. It will encourage best practice, operate on the basis that all partners have an equal say and promote transparency and accountability to the individual Partner Fund Committees.
- 1.4 The remit of the Joint Committee is:
 - 2.1 First Phase – Period to April 2018 or commencement of the Contract (whichever is the later)
 - 2.1.1 To provide support and guidance to the work being undertaken by the Officer Operations Group to give effect to the pooling arrangements.
 - 2.1.2 To consider issues and provide feedback on relevant proposals as they are developed, ensuring effective engagement with individual Partner Fund Committees.
 - 2.1.3 To scrutinise and monitor project management arrangements and proposals for the appointment of advisers.
 - 2.1.4 To oversee costs to deliver the pool vehicle, obtaining approval from individual Authorities where necessary.
 - 2.1.5 To monitor and scrutinise responsibilities for delivery of the project and relevant support arrangements.
 - 2.1.6 To oversee and provide feedback on positions and conclusions deriving from work streams adopted by the Officer Operations Group.
 - 2.1.7 To formulate processes and policies for appointment and termination of membership to the Joint Committee.
 - 2.1.8 To propose and confirm contracts and policies required to commence transition to the BCPP Pool arrangements.
 - 2.1.9 To provide support and guidance to the work being undertaken by the Officer Operations Group to do all things necessary to implement the final proposal, including preparatory work for asset transition.
 - 2.1.10 To consider the initial range of sub-funds to be provided and to make recommendations to the BCPP Board for the creation of those sub funds
 - 2.1.11 To sign off the draft prospectus for each individual sub fund prior to FCA approval, including scale, investment controls and restrictions, benchmarks, mechanisms for pricing
 - 2.2 Phase 2 – Post Establishment and Commencement of Operations
 - 2.2.1 To facilitate the adoption by the Authorities of relevant contracts and policies.
 - 2.2.2 To consider requests for the creation of additional sub funds and to make recommendations to the BCPP Board as to the creation of additional sub funds

- 2.2.3 To consider from time to time the range of sub funds offered and to make recommendations as to winding up and transfer of sub funds to the BCPP Board
- 2.2.4 To sign off the draft prospectus for each additional individual sub fund prior to FCA approval, including scale, investment controls and restrictions, benchmarks, mechanisms for pricing
- 2.2.5 To formulate and agree voting policy
- 2.2.6 To formulate and agree ESG/RI policy
- 2.2.7 To agree on behalf of the Authorities transition plans for the transfer of Pool assets
- 2.2.8 To approve and oversee a conflict of interest policy
- 2.2.9 To oversee performance of the BCPP Pool as a whole and of individual sub funds by receiving reports from the BCPP Board and taking advice from the Officer Operations Group on those reports along with any external investment advice that it deems necessary
- 2.2.10 To employ, through a host authority, any professional advisor that the Joint Committee deems necessary to secure the proper performance of their duties.

SCHEDULE 2

Constitution of the Joint Committee

1. The Joint Committee shall consist of one elected member appointed by each Authority. The member so appointed must at all times during the appointment, be a member of the committee or sub-committee of that Authority which discharges the functions of that Authority with respect to pensions.
2. Each Authority may appoint a named substitute. Any named substitute must meet the eligibility requirements in paragraph 1. The substitute may attend any meeting of the Joint Committee or any of its sub-Committees in place of that authority's principal member if prior written notice that the substitute will attend is given to the Secretary of the Joint Committee by the Authority concerned
3. Where a substitution notice is in effect with respect to a particular member at a particular meeting, the substitute shall be a full member of the Joint Committee for the duration of the meeting in place of the principal member
4. Each Authority may remove its appointed member and appoint a different member by giving written notice to the Secretary to the Joint Committee.
5. Each appointed member shall be entitled to remain on the Joint Committee for so long as the Authority appointing them so wishes, but shall cease to be a member if he or she ceases to be a member of the appointing Authority or if that Authority removes the appointed member.
6. Any casual vacancies will be filled as soon as reasonably practicable by the Authority from which such vacancy arises by giving written notice to the Secretary to the Joint Committee or his or her nominee.
7. Each member of the Joint Committee shall comply with any relevant code of conduct of his or her Authority when acting as a member of the Joint Committee.

Proceedings

8. **Time and Place of Meetings**

The Joint Committee will meet at least once each year and further as may be required. All meetings of the Joint Committee will take place at a suitable venue and at a time to be agreed by the Joint Committee.

9. **Notice of and Summons to Meetings**

The Secretary to the Joint Committee will give notice to the public of the time and place of any meeting in accordance with Part VA of the Local Government Act 1972. At least five clear days before a meeting, the Secretary to the Joint Committee will send a summons by post or email to every Member or make arrangements for it to be left at his or her usual office. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

10. **Chair, Vice Chair and Secretary of Joint Committee**

10.1 The Chair of the Joint Committee will be appointed from time to time by the members of the Joint Committee. The Chair of the Joint Committee shall be selected annually by election by the Joint Committee but the Chair may be re-elected for a further term.

10.2 The Vice Chair of the Joint Committee will be appointed from time to time by the members of the Joint Committee. The Vice Chair of the Joint Committee shall be selected

annually by election by the Joint Committee but the Chair may be re-elected for a further term.

- 10.3 If there is a quorum of members present but neither the Chair nor the Vice-Chair is present at a meeting of the Joint Committee, the other members of the Joint Committee shall choose one of the members of the Joint Committee to preside at the meeting.
- 10.4 The Authority represented by the Chair shall appoint one of its officers to act as Secretary to the Joint Committee in accordance with Clause 7 of this Agreement.
- 10.5 The Secretary shall provide legal and secretariat services to the Joint Committee..

11. **Quorum**

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

12. **Voting**

12.1 **Majority**

Each member of the Joint Committee shall have one vote. Any matter will be decided by a simple majority of those members of the Joint committee present in the room at the time the question is put.

12.2 **By Substitutes**

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

12.3 **Show of hands**

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

13. **Minutes**

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

14. **Public Access**

- 14.1 Meetings of the Joint Committee shall be open for members of the public to attend unless the Joint Committee determines that it is necessary to exclude members of the public in accordance with Part VA of the Local Government Act 1972 or the Joint Committee determines that it is necessary to close the meeting to the public because of a disturbance. Copies of the agenda for meetings of the Joint Committee and any reports for its meetings shall be open to inspection by members of the public at the offices of the Authorities with the exception of any report which the Secretary to the Joint Committee determines relates to items which in his or her opinion are likely to be considered at a time when the meeting is not to be open to the public.

14.2 **Disturbance by member of the public**

If a member of the public interrupts proceedings, the Chair will warn the person concerned. If that person continues to interrupt, the Chair will arrange for their removal

from the meeting room and will suspend the meeting until the member of the public has left or been removed.

14.3 **Clearance of part of meeting room**

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

15. **Overview and Scrutiny**

15.1 The Joint Committee and the Host Authority will co-operate with reasonable requests for information from any of the Authorities' overview and scrutiny committees.

16. **Regulation of Business**

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

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

BCPP DRAFT IAA 05/01/2016

SCHEDULE 3

Terms of reference for the Officer Operations Group

1. The Officer Operations Group is a working group of officers appointed by the Authorities whose role is to provide a central resource for advice, assistance, guidance and support for the Joint Committee (and also if requested for the Authorities as a collective group of investors in the Pool).
2. The Officer Operations Group shall work with the Joint Committee to support the functions of the Joint Committee as set out in the Joint Committee's Terms of Reference.
3. The Officer Operations Group shall provide technical support at meetings of the Joint Committee, for example by approving and delivering performance management reports for the Joint Committee on all aspects relating to the provision of services by BCPP.
4. The Officer Operations Group shall act as a conduit for the BCPP Joint Committee to communicate back to the respective Authorities and/or direct to BCPP as appropriate.
5. The Officer Operations Group shall operate in accordance with the shared objectives of the Authorities as set out at **Schedule 4** and within any budget set by the Authorities

SCHEDULE 4

Shared objectives

POOL OBJECTIVES

1. To provide to the authorities a compliant and effective means of meeting the Government's requirement for the pooling of LGPS funds and thereby to achieve scale, improve governance, enhance capability and capacity to deliver infrastructure investment and fees savings and to comply with any current and future governance requirements placed on the investment function of LGPS administering authorities.
2. To operate with a common or like-minded responsible investor/Shareholder voting policy which focuses on securing high levels of corporate governance by the companies invested in.
3. To share legal ownership, control and decisive influence over BCPP and to allocate the associated costs of operating BCCP between the pool members in an equitable manner.
4. Following the transitioning of assets to the BCPP Pool, the partner Authorities shall primarily but not exclusively invest their fund assets either through the collective investment vehicle(s) operated by the BCPP Pool, as the primary and exclusive collective investment vehicle(s) for all eligible fund assets, or by appointing the BCPP Pool to manage any non-eligible pension assets outside of such vehicle(s).

ASSET STRATEGY

6. Asset allocation strategy in the BCPP Pool is an individual Authority (not a Pool) decision.
7. To drive through efficiencies and work effectively, the Authorities must have a complementary investment ethos, risk appetite and strategy.
8. The BCPP Pool structure should be capable of complementing a bespoke investment strategy for scheme employers with common characteristics.
9. A Responsible Investor/Shareholder Voting Policy will be agreed for operation by the BCPP Pool, focusing on encouraging high levels of corporate governance by the companies invested in. This will seek to maximise shareholder value by focusing on the long term risk adjusted reward of the assets held by the BCPP Pool. The policy will seek to implement and further develop industry best practice. Where possible, this will be undertaken by utilising the combined voting power of the LGPS (e.g. through organisations such as LAPFF).

GOVERNANCE/VEHICLE STRUCTURE

10. The pooling proposal should address the Government's aims of ability to achieve scale, improved governance, enhance capability and capacity to deliver infrastructure and fee savings.
11. The Authorities should retain a pivotal role in the governance of any pooled structure chosen.
12. Any new structures should offer opportunities for savings, while retaining or improving on the Authorities' funds' performance net of fees / costs.
13. The BCPP Pool should expand internal investment management capability and increase resilience for all partner Authorities.

14. The structure chosen must be sufficiently flexible to ensure assets are only transferred into any vehicle when/if it is cost effective, tax efficient and managerially effective to do so across the BCPP Pool.
15. There must be a specific solution to infrastructure investing.
16. To ensure appropriate risk controls are in place to protect partner Authorities' funds' assets, an appropriate regulated entity should be at the core of the BCPP Pool.
17. The tax transparent vehicle should be an ACS .

SHARING RESOURCE IMPROVING RESILIENCE

18. The solution should provide additional resilience and capacity over and above current investment structures.
19. The solution will seek to provide internal shared resource to progress more proactive management of liability and cash flows.
20. Activities will be distributed across the Authorities to improve performance through creating centres of excellence and improving resilience through larger teams.
21. Core to the creation of the BCPP Pool is enhancing resilience across all partner Authorities' funds and developing additional capacity for internal investment. As such, the new entity should be situated in a single location which ensures:
 - 21.1 there is a base proposition that ensures continuity of performance for the currently internally managed funds, i.e. sufficient transitioning staff will move to the new location;
 - 21.2 the BCPP Pool is sustainable and capable of growth going forward i.e. it requires a location with a vibrant financial / commercial market to support future recruitment; and
 - 21.3 that it is accessible to all partner Authorities i.e. on major transport routes (road and rail).

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Dated: 2017

- (1) BEDFORD BOROUGH COUNCIL
- (2) CUMBRIA COUNTY COUNCIL
- (3) DURHAM COUNTY COUNCIL
- (4) THE EAST RIDING OF YORKSHIRE COUNCIL
- (5) LINCOLNSHIRE COUNTY COUNCIL
- (6) MIDDLESBROUGH BOROUGH COUNCIL
- (7) NORTHUMBERLAND COUNTY COUNCIL
- (8) NORTH YORKSHIRE COUNTY COUNCIL
- (9) THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE
- (10) SOUTH YORKSHIRE PENSIONS AUTHORITY
- (11) SURREY COUNTY COUNCIL
- (12) WARWICKSHIRE COUNTY COUNCIL
- (13) BORDER TO COAST PENSIONS PARTNERSHIP LIMITED

Shareholders' Agreement

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DRAFT BCPP SHAREHOLDERS AGREEMENT

BETWEEN

- (1) **Bedford Borough Council**, of Borough Hall, Cauldwell Street, Bedford, MK42 9AP;
- (2) **Cumbria County Council**, of The Courts, Carlisle, Cumbria, CA3 8NA;
- (3) **Durham County Council**, of County Hall, Durham, DH1 5UE;
- (4) **The East Riding Of Yorkshire Council**, of County Hall, Beverley HU17 9BA;
- (5) **Lincolnshire County Council**, of County Offices, Newland, Lincoln, LN1 1YL;
- (6) **Middlesbrough Borough Council**, of PO Box 340, Middlesbrough, TS1 2XP;
- (7) **Northumberland County Council**, of County Hall, Morpeth, Northumberland, NE61 2EF;
- (8) **North Yorkshire County Council**, of County Hall, Northallerton, North Yorkshire, DL7 8AL;
- (9) **The Council of the Borough of South Tyneside**, of Town Hall and Civic Offices, Westoe Road, South Shields, Tyne and Wear, NE33 2RL;
- (10) **South Yorkshire Pensions Authority**, of 18 Regent Street, Barnsley, S70 2HG (acting on behalf of itself and Sheffield City Region Combined Authority);
- (11) **Surrey County Council**, of County Hall, Penrhyn Road, Kingston upon Thames, KT1 2DN; and
- (12) **Warwickshire County Council**, of PO Box 3, Shire Hall, Warwick, CV34 4RL
(together, the "**Shareholders**"); and
- (13) **Border to Coast Pensions Partnership Limited**, a company incorporated in England and Wales (registered number [●]) whose registered office is at [ADDRESS] ("**BCPP**" or "**the Company**").

BACKGROUND

- (A) The Shareholders together are each administering authorities within the LGPS and within the meaning of the Local Government Pension Scheme Regulations 2013. They each administer, maintain and invest their own respective funds within the LGPS in accordance with those Regulations and the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016.
- (B) BCPP has been formed as an entity to act as an alternative investment fund manager to run and operate one or more collective investment vehicles to allow the administering authorities to pool some or all of their respective LGPS investments and any other authorised investment activities of the pool.
- (C) The Shareholders are the sole shareholders in BCPP and have agreed to enter into this Agreement to record the terms of their relationship with each other in relation to BCPP and to regulate certain aspects of their affairs and dealings with BCPP.
- (D) BCPP has agreed with the Shareholders that it will comply with the terms and conditions of this Agreement insofar as they relate to BCPP and insofar as it lawfully can do so.
- (E) BCPP and the Shareholders have agreed that they will comply with the Local Authorities (Companies) Order 1995 (and any supplemental or replacement legislation related thereto) in so far as it relates to BCPP.

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

1.1 the following words and expressions have the following meanings unless the context otherwise requires:

"2006 Act"	the Companies Act 2006 (as amended from time to time)
"A List Reserved Matter"	the reserved matters set out in Part A of Schedule 1 (being unanimous reserved matters)
"A Shares"	the A ordinary shares of £1.00 each in the capital of BCPP having the rights set out in the Articles
"ACS"	an Authorised Contractual Scheme which is a collective investment scheme authorised and regulated by the Financial Conduct Authority
"ACS Funds"	sub-funds of the ACS
"Adequate Procedures"	in respect of the relevant party, adequate procedures designed to prevent persons associated with it from undertaking conduct causing it to be guilty of an offence under section 7 Bribery Act and which comply with the guidance published under section 9 Bribery Act (a)
"Annual Budget"	a budget in a form to be prepared and adopted pursuant to clause 6 in respect of BCPP for each year, such budget for the first year being included in the Initial Strategic Plan
"Annual Operating Charge"	the meaning given to it in clause 4.1
"Anti-Bribery Laws"	any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws, any common law, judgment, demand, order or decision of any court, regulator or tribunal which relate to anti-bribery and/or anti-corruption including the Bribery Act
"Anti-Corruption Policy"	an anti-corruption policy of BCPP requiring BCPP and its officers, employees, agents and any other person who performs services for or on its behalf to comply with the Anti-Bribery Laws
"Articles"	the Articles of Association of BCPP to be adopted at Completion, being those in the agreed form as amended from time to time in accordance with the terms of this Agreement
"B List Reserved Matter"	the reserved matters set out in Part 2 of Schedule 1 (being Shareholder Majority reserved matters)
"B Shares"	the B ordinary shares of £1.00 each in the capital of BCPP having the rights set out in the Articles

"BCPP Confidential Information"	any Confidential Information which relates (in whole or in part) to BCPP
"Board"	the board of directors of BCPP from time to time
"Bribery Act"	the Bribery Act 2010
"Business"	the meaning given to it in clause 2.1
"Business Day"	a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales
"Chief Executive"	the office of (or person appointed to the office of as the context requires) chief executive of BCPP
"Completion"	the performance by the parties of their respective obligations under clause 3
"Confidential Information"	the meaning given to it in clause 13.4
"Control"	in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise and "Controls" and "Controlled" will be construed accordingly
"Costs"	all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement
"Deadlock Date"	the date of service of a Deadlock Notice by any Shareholder on BCPP and the other Shareholder(s)
"Deadlock Notice"	a written notice confirming that a Deadlock Situation has arisen
"Deadlock Situation"	the meaning given to it in clause 10.1
"Discloser"	the meaning given to it in clause 13.4.1
"Dispute Notice"	a written notice confirming that a Shareholder believes that a dispute has arisen in accordance with clause 11
"EIR"	the Environmental Information Regulations 2004 and any subordinate legislation made under it, any amendment or re-enactment of any of them, all as amended, supplemented and/or replaced from time to time
"Encumbrance"	any mortgage, charge, pledge, lien, assignment, option, restriction, claim, right of pre-emption, right of first refusal, third party right or interest, other encumbrance or security interest of any kind or other type of preferential arrangement (including a title transfer or retention arrangement) having similar effect
"Exiting Shareholder"	the meaning given to it in clause 14.6
"Fair Market Value"	the fair market value of any Share agreed between the Board and any Shareholder or, in the event of any

	dispute, as determined by the auditors of BCPP (or if they are unwilling to act, by an independent accountant nominated by the Board and the relevant Shareholder(s) (or, in default of which, by the President of the Institute of Chartered Accountants in England and Wales))
"Financial Year"	the period starting on Completion and ending on 31 March and each successive accounting reference period of BCPP as determined by section 391 of the Companies Act 2006
"Fixed Dividend"	has the meaning given in the Articles
"FOIA"	the Freedom of Information Act 2000, all regulations made under it and any subordinate legislation made under them, any amendment or re-enactment of any of them, all as amended, supplemented and/or replaced from time to time
"FOIA Legislation"	the FOIA and/or the EIR (as applicable)
"Group Companies"	in respect of a person, any persons that Control, are Controlled by or are under common Control with that person from time to time
"Initial Strategic Plan"	the Strategic Plan for BCPP for the period starting on or around the date of Completion and being in the agreed form
"Inter Authority Agreement"	the agreement between the Shareholders to cooperate in the pooling of LGPS investments dated [•]
"LGPS"	the Local Government Pension Scheme in England and Wales
"Payment Date"	the meaning given to it in clause 4.3
"Permitted Transferee"	another LGPS administering authority admitted as a new Shareholder in accordance with clause 18
"Procurement Legislation"	Directive 2014/24/EU of the European Parliament and of the Council and any legislation implementing this Directive in the UK (as amended from time to time) which at the date of this Agreement shall be the Public Contracts Regulations 2015;
"Purpose" or "Purposes"	the meaning given to them in clause 13.5.2
"Recipient"	the meaning given to it in clause 13.4.1
"Regulatory Capital Requirements"	the requirements under Article 9 of the Alternative Investment Fund Managers Directive 2001/61/EU as amplified or implemented EU Regulation 231/2013 and any relevant other European Union or United Kingdom instrument
"Regulatory Capital Statement"	the statement issued by BCPP to determine whether BCPP satisfies Regulatory Capital Requirements

"Related Agreements"	<p>the following documents:</p> <p>(a) Articles</p> <p>(b) Inter Authority Agreement</p> <p>and any other agreements entered into between BCPP and all of the Shareholders before the date of this Agreement</p>
"Representatives"	<p>in respect of a party, that party's Group Companies and its and their officers, directors, employees, consultants and professional advisers; and "Representative" means any of them</p>
"Request for Information"	<p>a request for information to which the FOIA Legislation applies, where the information requested consists of or includes Confidential Information of a party to this Agreement</p>
"Request Recipient"	<p>a party that receives a Request for Information</p>
"Section 151 Officer"	<p>the officer designated by a local authority as the person responsible for the proper administration of its financial affairs, as required by section 151 of the Local Government Act 1972</p>
"Shared Objectives"	<p>the objectives set out in Schedule 2</p>
"Shareholder Majority"	<p>the holders of 75% or more of the A Shares from time to time</p>
"Shareholder Reserved Matters"	<p>the A List Reserved Matters and the B List Reserved Matters</p>
"Shareholders"	<p>any holder of Shares and "Shareholder" will mean any of them</p>
"Shares"	<p>shares in the capital of BCPP and "Share" will be construed accordingly</p>
"Statutes"	<p>the Companies Acts as defined in section 2 of the Companies Act 2006 and every other statute, order, regulation, instrument or other subordinate legislation for the time being in force relating to companies and affecting the Company</p>
"Strategic Plan"	<p>the annual business plan (including the Annual Budget) for BCPP prepared and approved in accordance with clause 6 as varied from time to time in accordance with the terms of this Agreement</p>
"Subsequent Strategic Plan"	<p>the Strategic Plan for any Financial Year other than the first Financial Year</p>
"Subsidiary/ies"	<p>has the meaning given to it by section 1159 of the Companies Act 2006 and for the purposes of section 1159(1) a company (the first company) shall be treated as a member of another company if:</p>

- (a) any of its subsidiaries is a member of that other company; or
- (b) any shares in that other company are held by a person acting on behalf of the first company or any of its subsidiaries; or
- (c) any shares in that other company are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares by the first company

“Termination Date” the date of termination of this Agreement under **clause 16**

“Withdrawal Date” the meaning given to it in **clause 14.5**

- 1.2 references to the background section, clauses and Schedules are to the background section and clauses of and schedules to this Agreement and references to paragraphs are to paragraphs of the relevant Schedule;
- 1.3 the Schedules form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement will include the Schedules;
- 1.4 the background section and all headings are for ease of reference only and will not affect the construction or interpretation of this Agreement;
- 1.5 unless the context otherwise requires:
 - 1.5.1 references to the singular include the plural and vice versa and references to any gender include every gender; and
 - 1.5.2 references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.6 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended extended, consolidated, re-enacted and/or replaced and in force from time to time;
- 1.7 any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.8 the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word “other” or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;
- 1.9 references to “in writing” or “written” are to communication effected by post and email or any other means of reproducing words in a legible and non-transitory form (but not fax);
- 1.10 any reference to a document being in the “agreed form” will mean that document in the form and content agreed by the parties and, for the purposes of identification, initialled by or on behalf of each party;
- 1.11 an obligation on a party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that party; and

1.12 unless expressly stated otherwise, all obligations, representations and warranties on the part of two or more persons are (unless stated otherwise) entered into, given or made by such persons severally.

2. BUSINESS OF BCPP

2.1 The parties agree that the business of BCPP shall be (unless and until otherwise determined in accordance with this Agreement) acting as an alternative investment fund manager to run and operate one or more collective investment vehicles or supervise and provide advice in relation to such investments in order to provide a collaborative platform through which the Shareholders can aggregate their LGPS investments (the "**Business**").

2.2 the Business and BCPP will conduct the Business in accordance with:

2.2.1 the then current Strategic Plan;

2.2.2 the Shared Objectives; and

2.2.3 applicable law.

3. COMPLETION

3.1 After the signing of this Agreement, the parties shall procure that:

3.1.1 the written resolutions in the agreed form are passed to among other things:

3.1.1.1 adopt the Articles; and

3.1.1.2 authorise the BCPP directors to allot the share subscriptions and redesignate the existing issued shares[s] in the capital of BCPP as referred to in **clause 3.1.2** ;

3.1.2 each of the Shareholders will subscribe in cash at par for the following number and class of Shares respectively in accordance with FCA requirements, and will waive any rights of pre-emption which any of them may have in respect of such subscriptions:

Name	Number of Shares	Class of Share	Aggregate Subscription Sum (£)
[•]	[TBC]	B Share	[TBC]
[•]	[TBC]	B Share	[TBC]

3.1.3 a meeting or meetings of the Board shall be held at which (i) the shares specified in **clause 3.1.2** will be allotted and issued to the Shareholders respectively and registered in their names and (ii) each existing ordinary share that has been allotted to each of the Shareholders shall be redesignated as an A Share¹;

3.1.4 the following Directors shall be appointed:

Name	Title
[•]	Chairman
[•]	Director

¹ Note this has been drafted on the basis that each shareholder will take a subscriber share at incorporation of BCPP.

[•]	Director
[•]	Director
[•]	[Non-Executive Director]
[•]	[Non-Executive Director]

Subsequent administrative matters

3.2 After completion of the matters referred to in **clause 3.1** each of the Shareholders will procure that each of the Shareholders shall enter into those of the Related Agreements to which they are a party.

3.3 BCPP warrants and represents to each of the Shareholders that, at the date of this Agreement, BCPP has not carried on any business, has no assets or liabilities, has no employees and is not a party to any contracts except as necessary to comply with **clause 3.1** and 3.2

4. FINANCE AND REGULATORY CAPITAL

4.1 Each Shareholder shall pay an annual operating charge to BCPP in the amount specified in the Annual Budget in relation to services provided by BCPP as specified in the Annual Budget ("**Annual Operating Charge**").

4.2 Each Shareholder shall be required to make a contribution to BCPP's Regulatory Capital Requirements by way of a subscription for B Shares:

4.2.1 in accordance with **clause 3** and thereafter in accordance with the Regulatory Capital Statement which will be issued annually by BCPP and approved in writing by all of the Shareholders;

4.2.2 at such other times as the Directors reasonably determine that additional regulatory capital is required by BCPP and notify each of the Shareholders in writing accordingly (including, without limitation, at such times as the Shareholders unanimously approve any new investor into the BCPP pool) (such notice being an "**Additional Regulatory Capital Statement**"); and

4.2.3 after such time as any Shareholder (an "**Exiting Shareholder**") ceases to hold any A Shares (at which time any B Shares held by that Shareholder may, at the discretion of the Board, be redeemed by BCPP in accordance with and subject to the Articles and the Statutes). In this regard, upon a Shareholder giving notice to BCPP pursuant to the Articles (at least twelve (12) months prior to any proposed withdrawal to expire on 31 March next following) that it wishes to withdraw as a Shareholder, the Directors shall thereafter issue a notice in writing to each remaining Shareholder not less than six (6) months prior to the Withdrawal Date in respect of the Exiting Shareholder, notifying the remaining Shareholders that the Exiting Shareholder intends to withdraw as a Shareholder and confirming the amount of replacement regulatory capital (if any) and/or such other amount as may be required to be contributed by the remaining Shareholders in order to maintain the regulatory capital required by BCPP upon the redemption held by the Exiting Shareholders of the B Shares (such other amount shall also be deemed to be regulatory capital for the purpose of this **clause 4** (such notice being a "**Replacement Regulatory Capital Statement**").

4.3 Each Shareholder shall be liable to make an equal contribution (such equal amount payable by each Shareholder being that Shareholder's "**Relevant Share**" of such capital requirement) in respect of any Regulatory Capital Requirement which is specified in a Regulatory Capital Statement, Additional Regulatory Capital Statement or Replacement Regulatory Capital Statement (as the case may be) (each such statement being a "**Statement**" for the purposes of this **clause 4**), which contribution shall be satisfied by

way of a subscription by such Shareholder for such number of B Shares, at par value, as is equal to that Shareholder's Relevant Share. Each Statement shall specify the date (the "**Payment Date**") by which the subscription monies must be paid to BCPP by the Shareholders.

- 4.4 Following receipt of a Statement, each Shareholder shall advance to BCPP its Relevant Share of the Regulatory Capital Requirement specified therein, on or before the specified Payment Date. Upon receipt of payment, BCPP shall issue the requisite number of B Shares to each such Shareholder.
- 4.5 If any of the Shareholders (for this purpose, a "**Failing Shareholder**") fails to pay its Relevant Share of any Regulatory Capital Requirement on or before the relevant Payment Date (and without prejudice to any right to bring proceedings against the Failing Shareholder in relation to such failure) then, without prejudice to **clause 15 (consequences of breach)**:
- 4.5.1 BCPP shall notify the other Shareholders (each, a "**Non-Failing Shareholder**") in writing as soon as practicable and the Non-Failing Shareholders shall be bound to advance the Failing Shareholder's Relevant Share, in equal shares, by way of subscriptions for further B Shares in accordance with this **clause 4**, within seven days of receipt of such notice from BCPP.
- 4.5.2 If the Failing Shareholder within 20 days of a notice in writing from the Directors of non-payment contributes its Relevant Share of the Regulatory Capital Requirement (its "**Repayment Amount**") BCPP shall (if the other Shareholders (or any of them) have previously satisfied the Failing Shareholder's contribution pursuant to **clause 4.5.1**) promptly redeem the Non-Failing Shareholders' B Shares subscribed for pursuant to this **clause 4.5.2** in accordance with **Article 27** of the Articles and reimburse such Non-Failing Shareholder(s) for subscriptions paid under **clause 4.5.1** promptly (and for this purpose each Shareholder shall be deemed to have given its prior written consent to such redemption by virtue of entering into this Agreement).
- 4.5.3 Any Failing Shareholder's voting rights in relation to its A Shares shall be immediately suspended (except in relation to resolutions to either amend the Articles or any rights attaching to the class of Shares held by the Failing Shareholder or any of the A List Reserved Matters), and the vote of the Failing Shareholder shall not be required in relation to the approval of any A List Reserved Matter or B List Reserved Matter, until such time as the Failing Shareholder has subscribed for its B Shares in BCPP and paid its Relevant Share of the Regulatory Capital Requirement, at which time the restrictions set out in this **clause 4.5.3** shall cease to apply.
- 4.5.4 All dividends and distributions to which the Failing Shareholder would otherwise have been entitled under this Agreement or the Articles (up to a maximum aggregate amount equal to the Repayment Amount) shall be applied in redeeming the B Shares subscribed for by the Non-Failing Shareholders pursuant to **clause 4.5.1** (pro rata to their contribution to the Repayment Amount).
- 4.5.5 For the avoidance of doubt, if a Failing Shareholder contributes its Repayment Amount in accordance with **clause 4.5.2**, the provisions of **clauses 4.5.3** and **4.5.4** shall not apply.
- 4.6 If BCPP requires additional funds or financial support from the Shareholders other than as explicitly provided for in this **clause 4**, no Shareholder shall seek to agree terms with BCPP in relation to such matter which differ from those on which any other Shareholder is providing equivalent finance or support.
- 4.7 The Shareholders agree that, subject to **clauses 4.8** and **4.9**, the aggregate amount of any actual liability incurred by any or all of them pursuant to any guarantee or indemnity given by any or all of them to any third party in respect of any liabilities or obligations of BCPP, or pursuant to any sole or several guarantee or indemnity given in respect of such obligations or liabilities by any of them with the consent in writing of the others, shall be borne by them in equal proportions and each shall indemnify and keep indemnified the others accordingly. Subject to **clause 4.8**, no Shareholder shall be obliged to provide any guarantee in respect of any liabilities or obligations of BCPP unless the Shareholders have

given their unanimous approval to the Shareholders providing such guarantees on the terms of this **clause 4.7**. For the avoidance of doubt, this **clause 4.7** shall not apply to any obligations related to BCPP's Regulatory Capital Requirements.

- 4.8 Where any Shareholders combine and sell any Shares back to BCPP pursuant to [**clause 14.3**], any such newly combined entity shall assume any and all of the aggregate liabilities of its original component separate entities in relation to this Agreement.
- 4.9 Save as set out in **clauses 4.1 to 4.5** there shall be no obligation upon the Shareholders to subscribe for Shares in BCPP or to provide, or procure to be provided, to BCPP loans or loan facilities.
- 4.10 The Shareholders agree that BCPP, acting by the Directors, shall have the power to seek funding by way of borrowings on behalf of BCPP from any third party commercial lender, provided that:
- 4.10.1 the Directors seek to obtain any such funding on the most favourable terms reasonably available as to interest, repayment and security;
- 4.10.2 no prospective lender shall be allowed a right to participate in the equity share capital of BCPP as a condition of any such loan; and
- 4.10.3 no prospective lender shall be allowed to take any Encumbrance over any of the Shares; and
- 4.10.4 any third party loan(s) in excess of £5,000,000 shall require prior approval from all of the Shareholders.

5. **DIVIDEND POLICY**

Reduction of Annual Operating Charge

- 5.1 The Shareholders acknowledge that the Company will pay the Fixed Dividend on the B Shares in accordance with the Articles.
- 5.2 Subject to **clauses 5.1, 5.4, 5.6 and 5.7**, the Shareholders intend that BCPP will use any profits lawfully available for distribution for that Financial Year first towards the reduction (or elimination) of the Annual Operating Charge for the next Financial Year.
- 5.3 Subject to **clauses 4.5, 5.1, 5.2, 5.4, 5.6 and 5.7**, the Shareholders intend that BCPP will either distribute to the Shareholders by way of cash dividend in respect of each Financial Year all of its profits lawfully available for distribution for that Financial Year or, in the sole discretion of the Board, make available these distributable profits to facilitate a buyback of Shares by BCPP under **clause 14.7** in the event of an Exiting Shareholder.
- 5.4 The Shareholders may unanimously agree in writing for any Financial Year not to make any distribution by way of cash dividend or to make a distribution of a different amount of available profits to that set out in **clause 5.3**.
- 5.5 Any distribution for a Financial Year will be made within six months of the end of that Financial Year.

Prior repayment of third party indebtedness

- 5.6 No distribution by way of dividend or otherwise will be made until BCPP has repaid all third party financing unless otherwise agreed by a Shareholder Majority.

Retentions

- 5.7 The amount of any distribution that would otherwise be made by BCPP under **clause 5.3** will be reduced by an amount equal to the aggregate of:
- 5.7.1 any amount necessary to ensure that BCPP would not otherwise be in breach or likely to be in breach of any covenant or undertaking given by BCPP to any lender in the relevant financial year following the distribution;
 - 5.7.2 any amount necessary to ensure that BCPP would not otherwise be in breach or likely to be in breach of any applicable Regulatory Capital Requirements following the distribution; and
 - 5.7.3 any amount resolved by the Board and resolved unanimously by the Shareholders as prudent to retain having regard to:
 - 5.7.3.1 the cashflow and working capital requirements of BCPP;
 - 5.7.3.2 the need to make reasonable provisions and transfers to reserves;
 - 5.7.3.3 the interests of BCPP in respect of the implementation of its Strategic Plan or its business prospects; and
 - 5.7.3.4 the future outlook and performance of the business of BCPP, including the scope to reduce the Annual Budget for future years.

6. THE STRATEGIC PLAN, ANNUAL BUDGET, ADMINISTRATIVE AND ACCOUNTING MATTERS

- 6.1 The Strategic Plan which is first agreed by all Shareholders and which starts from or around the date of Completion will be the Initial Strategic Plan.
- 6.2 BCPP will prepare an Annual Budget which will be included within the Strategic Plan for each Financial Year in accordance with **clause 6.4**.
- 6.3 Each Annual Budget will include the following:
- 6.3.1 an estimate of the working capital requirements of BCPP incorporated within a cashflow forecast;
 - 6.3.2 a projected profit and loss account;
 - 6.3.3 an operating budget (including estimated capital expenditure requirements) and balance sheet forecast;
 - 6.3.4 a review of projected business;
 - 6.3.5 a summary of business objectives; and
 - 6.3.6 a financial report which includes an analysis of the results of BCPP and the established collective investment vehicles for the previous Financial Year compared with the Strategic Plan for that Financial Year, identifying variations in sales, revenues, costs and other material items.
- 6.4 Each Subsequent Strategic Plan will be substantially in the form of and contain a comparable level of detail to the Initial Strategic Plan and will be prepared by the Board in accordance with the Shared Objectives and thereafter presented to the Shareholders for comment and approval according to a timetable approved by the Board after due consultation with the Shareholders, provided that such Subsequent Strategic Plan shall in any event be submitted for approval by (i) the Board not later than 60 days before the commencement of the Financial Year to which it relates and (ii) the Shareholders not later than 30 days before the commencement of the Financial Year to which it relates. The Subsequential Strategic

Plan will be updated when approved in accordance with **clause 9.7 9.7**.

- 6.5 If any Subsequent Strategic Plan is not approved in accordance with **clause 6.4** before the end of the preceding Financial Year then until it is approved the business of BCPP will continue to be run in accordance with the Strategic Plan for that preceding Financial Year and the Annual Budget in respect of the immediately preceding Financial Year shall apply, increased by the Retail Price Index as published by the United Kingdom Office for National Statistics in September of the previous Financial Year (the "RPI"). In the event that the RPI is negative there shall be no increase and the Annual Budget will remain the same as for the previous Financial Year.
- 6.6 All Strategic Plans once approved by the Board and the Shareholders may only be amended with the approval of all of the Shareholders as set out in **clause 9** and **Schedule 1**.

Appointment of Auditors

- 6.7 [●] will be the auditors of BCPP unless removed from office and replaced in accordance with **clause 9**.

Basis of preparation of Accounts

- 6.8 The annual accounts of BCPP will be prepared in accordance with the laws applicable in, and the accounting standards, principles and practices generally accepted in, the United Kingdom.

Financial Year

- 6.9 The accounting reference date of BCPP will be 31 March unless changed in accordance with **clause 9**.
- 6.10 [●] will be the bankers to BCPP unless changed in accordance with **clause 9**.

Record keeping

- 6.11 The Shareholders will use all their powers in relation to BCPP to assist the Board to ensure that BCPP will maintain accurate and complete accounting and other financial records in accordance with the requirements of all applicable laws and generally accepted accounting practices applicable in the United Kingdom.

Conflicts policy

- 6.12 The Board will produce a written conflicts policy which shall be approved by a Shareholder Majority prior to being adopted. Any changes to this policy will similarly require approval from a Shareholder Majority.

7. DIRECTORS AND MANAGEMENT

Composition of the Board and subsequent Board appointments

- 7.1 The initial board shall be the Directors appointed on Completion in **clause 3.1**. Any subsequent or additional directors shall be appointed by the Board (or a committee of the Board) subject always to the prior approval of all of the Shareholders in accordance with **Part A of Schedule 1**. The Company Secretary (if any) shall be appointed by the Board.

Role and responsibilities

- 7.2 The Board will be responsible (within the parameters of the Strategic Plan) for the overall direction, supervision and management of BCPP, including the day to day management of BCPP and authority and responsibility for implementing the Strategic Plan.
- 7.3 The management of BCPP shall be vested in the Board provided that the day to day management of BCPP will be the responsibility of the Directors. Without prejudice to the

generality of the foregoing and subject to the express provisions of this Agreement, the Board will determine the general policy of BCPP and the manner in which that is to be carried out in light of the Strategic Plan as adopted by the Shareholders and will reserve to itself all matters involving major or unusual decisions and will procure that BCPP and its Subsidiaries will:

- 7.3.1 transact the Business on arm's length terms; and
- 7.3.2 without prejudice to the terms of any Related Agreements, maintain, with a well-established and reputable insurer, adequate insurance against all risks usually insured against by companies carrying on the same or a similar business including, but not limited to, employers liability insurance, public liability insurance, professional indemnity insurance and director's and officer's insurance, in each case (without prejudice to the generality of the foregoing) for the appropriate value determined by the Board; and
- 7.3.3 comply with the provisions of **clause 8**.
- 7.4 The specific responsibilities of the Chief Executive will be determined by the Board from time to time.
- 7.5 The Board shall implement any decision reached pursuant to the Shareholder Reserved Matters, subject to obtaining the requisite approval under **clause 9**.

Appointment and removal of Chief Executive

- 7.6 [•] will be appointed as Chief Executive on Completion. No Chief Executive will be appointed to office (or removed from office) unless approved in accordance with **clause 9**.

Annual approval or ratification of Directors

- 7.7 All of the Shareholders shall be required to approve the continuing appointment of all directors at each annual general meeting of BCPP.
- 7.8 In the event that any director appointment is not approved by all of the Shareholders then the Shareholders agree to take any necessary action (including the passing of any resolution) required by the Shareholders and/or the Board to remove such director at such time.

8. BOARD MEETINGS AND RESOLUTIONS

Frequency

- 8.1 The Board will meet at least four times a year.

Notice

- 8.2 Any director may call a meeting of the Board by giving not less than 5 Business Days' notice of the meeting (or such lesser notice as all the directors may agree) to the other directors.
- 8.3 Notice of any Board meeting must indicate:
 - 8.3.1 its proposed date and time;
 - 8.3.2 where it is to take place;
 - 8.3.3 the proposed agenda of items; and
 - 8.3.4 if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should simultaneously communicate with each other during the meeting.

- 8.4 Subject to Article 9.3, notice of any Board meeting must be given to each director but need not be in writing.

Participation

- 8.5 Directors will be treated as participating in a directors' meeting or part of a directors' meeting when:
- 8.5.1 the meeting has been called and takes place in accordance with this Agreement; and
- 8.5.2 they can each simultaneously communicate with and to the others participating in the meeting any information or opinions they have on any particular item of the business of the meeting.
- 8.6 In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or, provided **clause 8.5.2** is complied with, how they communicate with each other.
- 8.7 If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

Quorum

- 8.8 The quorum for the transaction of business at any Board meeting will be four directors participating in the meeting, including at least two non-executive directors.
- 8.9 If there is no quorum participating in any meeting of the Board within 30 minutes after the time fixed for the meeting or, if during the meeting a quorum ceases to be participating, the meeting will be adjourned to such time (not being earlier than 5 Business Days after the date of the original meeting unless otherwise agreed by all the directors) as the director or directors participating in the meeting determine. All directors will be notified of the adjournment.

Voting

- 8.10 Subject to **clauses 8.12** and **9** any resolution proposed to the Board will be approved if more votes are cast for it than against it.

Written Resolutions

- 8.11 The Board may pass any resolution by way of a written resolution signed by a majority of the directors or to which a majority of eligible directors has otherwise indicated agreement in writing.

Chairman

- 8.12 [The first Chairman shall be [●]]. Thereafter, the position of Chairman of the Board will be filled by one of the independent non-executive directors of the Board and will be appointed by a Shareholder Majority. If the Chairman is not present at any Board meeting, the directors present may appoint any one of their number to act as Chairman for the purpose of the meeting. The Chairman of the Board will have a casting vote on any tied decision.

Alternates

- 8.13 Each Director will only be entitled to appoint as an alternate (i) any other director; or (ii) any other person in respect of which prior approval has been obtained from all of the Shareholders.
- 8.14 The rights and responsibilities of an alternate and the procedure for terminating his/her appointment are set out in the Articles.

Observers

- 8.15 Each of the Shareholders may each invite one person to attend any meetings of the Board and if so invited they may attend and speak (but not vote).

Board Committees

- 8.16 The Board will determine from time to time if it is appropriate to establish any committees of the Board and shall determine the scope, authority and any terms of reference for any such committees at the time of such creation.

Subsidiary Boards

- 8.17 Subject always to receiving the approval of all of the Shareholders, the Board will determine the composition, governance arrangements and limits of authority of any and all subsidiaries of BCPP and each of the Shareholders agrees to exercise all of their powers as a Shareholder to seek to ensure that all of the constitutional documents of any subsidiary reflect at all times the agreed position determined by the Board (including, but not limited to, any agreed scope and limits of authority and any restrictions imposed by the Financial Conduct Authority on BCPP or any subsidiary of BCPP).
- 8.18 Each Shareholder shall nominate a representative from time to time to be its representative at shareholder meetings and shall notify the Company accordingly. A Shareholder may notify the Board at any time in writing of a change in representative.

SHAREHOLDER MEETINGS

- 8.19 General meetings of the Shareholders will take place in accordance with the Companies Act 2006 and the Articles including that:
- 8.19.1 for as long as there are a minimum of twelve (12) Shareholders, the meeting will be quorate once at least nine Shareholders are represented at the meeting (either in person or by proxy) and, for the avoidance of doubt, any matter that requires a Shareholder Majority or unanimous shareholder consent under this Agreement will not have the threshold for such consent reduced by virtue of not all of the Shareholders being present at a meeting;
- 8.19.2 the notice of meeting will set out an agenda identifying in reasonable detail the matters to be discussed (unless the Shareholders otherwise agree);
- 8.19.3 the chairman (who shall be the Chairman of the Board subject to **clause 9.4**) of the meeting will not have a casting vote.
- 8.20 Each of the Shareholders may each invite one person to attend any general meetings of the Shareholders and if so invited they may attend and speak (but not vote).

9. CONDUCT OF BCPP'S BUSINESS AND RESERVED MATTERS

- 9.1 Each of the Shareholders covenants with each other that so long as this Agreement remains in full force and effect it will:
- 9.1.1 act in good faith towards the other Shareholders [**NOTE: CLIFFORD TO PROVIDE WORDING IN RELATION TO COMMITMENT TO POOLING**];
- 9.1.2 promptly notify the others of any matters of which it becomes aware which may affect BCPP or the Business;
- 9.1.3 generally do all things necessary to give effect to the terms of this Agreement (including, so far as it is legally able, exercising all voting rights and powers (direct or indirect) available to it in relation to BCPP in a manner consistent with the terms of this Agreement);

- 9.1.4 use all reasonable endeavours to promote and develop the business of BCPP and any Subsidiaries to the best advantage in accordance with good business practice and the highest ethical standards and will not do or say anything which is intended to damage the goodwill or reputation of the Company or the ACS or any other investment vehicle operated by BCPP;
- 9.1.5 appoint a representative to act on behalf of that Shareholder at general meetings;
- 9.1.6 take all steps available to it to ensure that any meeting of the Board or any committee of the Board or any general meeting has the necessary quorum throughout;
- 9.1.7 exercise all voting and other rights and powers of control as are from time to time respectively available to it under this Agreement and the Articles and otherwise in relation to BCPP and its beneficial holdings in it and will execute and deliver such waivers and shall take or refrain from taking all other appropriate action within its power so as to procure that the provisions of this Agreement binding on it are duly observed and complied with and given full force and effect and all actions required by it are carried out promptly;
- 9.1.8 exercise all voting and other rights and powers respectively available to it to procure the alteration of the Articles to the extent necessary to permit the affairs of BCPP to be so operated (if it shall not be possible to secure the operation of this Agreement as set out in **clauses 9.1.1 to 9.1.7** by reason of any contrary provision of the Articles);
- 9.1.9 subject to the preceding provisions of this **clause 9.1**, observe the provisions of the Articles.
- 9.2 The undertakings of each Shareholder under this **clause 9** shall in each case be several so that each Shareholder shall only be liable for its own actions or failures to act in accordance with them, and none of them shall be liable for a failure to procure anything required by this **clause 9** where such failure is attributable to any action or failure to act by another Shareholder, but without prejudice to the liability of such other Shareholder.
- 9.3 Notwithstanding any other provision of this Agreement, should any Shareholder or any other person connected with it be in dispute with or have a conflict of interest with BCPP or any of its Subsidiaries, such Shareholder shall not do or omit to do anything which would or would be likely to prevent BCPP or any of its Subsidiaries from exercising or from deciding whether or not to exercise such rights as it may have against the Shareholder in dispute with it, or in respect of the matter in relation to which the conflict of interest arises. This **clause 9** is without prejudice to the provisions of **clause 26**.
- 9.4 If the Chairman of the Board is unable to attend any General Meeting of BCPP, another person shall be selected by a Shareholder Majority to chair such General Meeting in accordance with the Articles. The Chairman shall not have a casting vote at any general meeting of BCPP.
- 9.5 BCPP and the Shareholders agree to procure that an Annual General Meeting is held once each year with a view to approving the Annual Budget and any other resolutions to be proposed.

Structural Review

- 9.6 Each of the Shareholders agree that eighteen months from the date of this Agreement and thereafter on the anniversary of that date, they will procure that the Board will formally review and report on the corporate structure of BCPP and any of its Group Companies and the operation of their respective boards of directors and board committees so that each of the Shareholders can each consider any whether more efficient governance, any reduction of costs and/or improvement of performance is possible (and in the event that the Board resolves that changes are necessary and/or appropriate in its opinion at such time it will provide full details of the Board's recommendations to each of the Shareholders for due Shareholder consideration and approval before effecting any such changes).

Reserved Matters

9.7 It is agreed by the parties set out in this **clause 9.7** below that BCPP will not, and will procure that any subsidiary of BCPP will not and the Shareholders will exercise their powers in relation to BCPP to procure that (save as contemplated in this Agreement) BCPP will not, and will use best endeavours to procure that any subsidiary of BCPP will not:

9.7.1 carry out any of the A List Reserved Matters without the prior written approval of all of the Shareholders;

9.7.2 or carry out any of the B List Reserved Matters without the prior approval of a Shareholder Majority.

10. **DEADLOCK**

10.1 For the purpose of this **clause 10** a "**Deadlock Situation**" means:

10.1.1 any of the Shareholder Reserved Matters set out in **clause 9.7** not being approved by the requisite unanimity or majority and no resolution being reached following referral by any of the Shareholders for dispute resolution in accordance with the procedure set out in **clause 11**;

10.1.2 any other matter notified to the Board in a Deadlock Notice to be a "Deadlock Situation" between any of the Shareholders; or

10.1.3 any dispute between any of the Shareholders as to either:

10.1.3.1 the amount of profit lawfully available for distribution in accordance with **clause 5.3**; or

10.1.3.2 the amount by which any distribution will be reduced in accordance with **clause 5.7**; or

10.1.4 any dispute between the Shareholders which cannot be resolved in accordance with **clause 11** (Dispute Resolution Procedure).

Deadlock Notice

10.2 Any Shareholder may serve a Deadlock Notice on BCPP and the other Shareholder(s) if a Deadlock Situation has arisen. The Deadlock Notice will contain reasonable details of the Deadlock Situation.

Business during a Deadlock Situation

10.3 If any Deadlock Situation arises and for so long as it continues, each Shareholder will use its best endeavours (in so far as it is able by the exercise of its rights and powers in relation to BCPP) to procure that, notwithstanding the fact that there is a Deadlock Situation, BCPP can continue to carry on the Business in the ordinary course.

Deadlock resolution

10.4 If a Deadlock Notice has been served by any Shareholder confirming that a Deadlock Situation has arisen then each of the Shareholders concerned will use their best endeavours to resolve the Deadlock Situation within 10 Business Days after the Deadlock Date.

Referral to Shareholders

10.5 If a Deadlock Situation has arisen and it has not been resolved within 10 Business Days after the Deadlock Date then each Shareholder hereby agrees to refer the Deadlock Situation to a nominated officer of each authority, as set out in **Schedule 4**.

10.6 The Section 151 Officer of each authority will have 30 days (or such other timeframe as is agreed between the Shareholders) to meet and resolve the Deadlock Situation as they determine appropriate.

10.7 If the Section 151 Officer of each of the relevant Shareholders do not resolve the Deadlock Situation within 30 days after the Deadlock Date:

10.7.1 the provisions of **clauses 10.8 to 10.12** shall apply; and

10.7.2 no decision relating to the Deadlock Situation can be taken or imposed on BCPP or any Shareholder until such later time (if any) as the Deadlock Situation has been resolved.

Referral to mediation process

10.8 Where the relevant nominated officers referred to in **clause 10.5** of each authorities in dispute are unable to resolve such dispute, or where in the opinion of the Board such dispute would be more effectively resolved in another forum, the Board may refer such dispute to a mediator appointed by the relevant Shareholders until such dispute is resolved.

10.9 The Shareholders shall each bear their own costs incurred in relation to the mediation.

Referral to arbitration process

10.10 If the dispute is not resolved within 40 days of referral of the dispute to mediation any Shareholder involved in such dispute may (by service of a written notice on the other Shareholders and BCPP) refer the dispute to an arbitrator who shall be of not less than 10 years standing or qualification.

10.11 If the Shareholders cannot agree on an arbitrator within 15 days of service of the written notice on the other Shareholders and BCPP, the Board shall appoint an arbitrator nominated by the President for the time being of the Chartered Institute of Arbitrators in England and Wales.

10.12 The arbitrator's decision shall be final and binding on the Shareholders and BCPP. The costs of the arbitration shall be paid as directed by the arbitrator.

11. DISPUTE RESOLUTION PROCEDURE

11.1 The parties agree that in the event of any dispute between any of the Shareholders regarding any of the provisions of this Agreement, other than the matters set out in **clause 10** the Shareholders shall seek to resolve such dispute as follows:

11.1.1 any Shareholder may serve a Dispute Notice on BCPP and the other Shareholder(s) if that Shareholder believes that a dispute has arisen;

11.1.2 the Dispute Notice shall contain reasonable details of the dispute and the reasons why that Shareholder believes that a dispute has arisen; and

11.1.3 the Shareholders shall thereafter use best endeavours to resolve the dispute within 15 days of service of the Dispute Notice.

11.2 Where a dispute has not been resolved within 10 Business Days of service of the Dispute Notice in accordance with **clause 11.1** then any Shareholder shall be entitled to serve a Deadlock Notice on the BCPP and the provisions of **clause 10** (Deadlock) shall apply provided that **clause 10.4** shall not apply and for the purposes of **clause 10.5** it shall be assumed that the Deadlock Situation has not been resolved within 10 Business Days after the Deadlock Date.

12. ANTI-BRIBERY AND CORRUPTION

Compliance by BCPP

12.1 BCPP will, and the Shareholders will exercise all their powers in relation to BCPP to procure that BCPP will:

- 12.1.1 not do or omit to do any act or thing which constitutes or may constitute a breach of and/or an offence under Anti-Bribery Laws or would cause any Shareholder to be liable for an offence under any such laws;
- 12.1.2 within 60 days of Completion prepare and implement an appropriate Anti-Corruption Policy and have in place Adequate Procedures; and
- 12.1.3 comply with the Adequate Procedures and the Anti-Corruption Policy as amended from time to time.

Compliance by the Shareholders

- 12.2 Each Shareholder will not do or omit to do any act or thing which constitutes or may constitute a breach of and/or an offence under Anti-Bribery Laws and would cause the other Shareholder or BCPP to be liable for any offence under any such laws.

13. INFORMATION TO SHAREHOLDERS AND CONFIDENTIALITY

Provision of information to Shareholders

- 13.1 BCPP will, and the Shareholders will procure that BCPP will, supply the Shareholders with such financial information as is necessary to keep each Shareholder informed about how the business of BCPP is performing (including any other information relating to operational or risk matters) as determined by each Shareholder.
- 13.2 In particular BCPP will supply each Shareholder with:
 - 13.2.1 quarterly management accounts and reports of BCPP containing such information (including as to whether the structure and operation of BCPP and any of its Group Companies and their respective boards of directors and board committees are operating effectively) as the Shareholders reasonably require from time to time, within 30 days of the end of the quarter to which they relate;
 - 13.2.2 unaudited annual accounts of BCPP prepared in accordance with **clause 6.8**, within 30 days of the end of the Financial Year to which they relate;
 - 13.2.3 a copy of the annual accounts after they have been audited and signed by the auditors within 6 months of the end of the Financial Year to which they relate;
 - 13.2.4 the outcome of a structural review into the efficiency of the governance structure noted under **clause 9.6**; and
 - 13.2.5 a report setting out the progress of the Company in relation to the objectives and/or milestones set out in the Strategic Plan and/or the Additional Strategic Plan.
- 13.3 BCPP will:
 - 13.3.1 allow each Shareholder and their respective authorised Representatives access at all reasonable times to examine the books and records of BCPP and to discuss its affairs with the directors and senior management; and
 - 13.3.2 provide, in accordance with the Local Authorities (Companies) Order 1995, each Shareholder and their respective authorised Representatives with such other information relating to the operations and management of BCPP as they may reasonably request to discharge such Representatives' duties. In determining the reasonableness of such requests, regard shall be had to the Shared Objectives set out in **Schedule 2** and the duties and responsibilities of the Shareholders.

Confidentiality

- 13.4 In this Agreement "**Confidential Information**" means, subject to **clause 13.10**:

- 13.4.1 any information (whether written, oral, in electronic form or in any other media) that is disclosed in connection with this Agreement and/or any Related Agreement by or on behalf of a party (the "**Discloser**") to another party (the "**Recipient**") or any of the Recipient's Representatives whether before, on or after the date of this Agreement and which relates (in whole or in part) to a party or its business and such information is of a material and commercially sensitive nature;
- 13.4.2 the terms of or subject matter of this Agreement or any Related Agreement or any discussions or documents in relation to them and in respect of such information each party will be deemed to be a Recipient where such information is of a material and commercially sensitive nature;
- 13.4.3 any information (whether written, oral, in electronic form or in any other media) about BCPP (including its customers, businesses, assets or affairs) which a Shareholder may have or acquire by virtue of the Shareholder's shareholding in BCPP and/or its right to appoint directors to the Board (in each case the Shareholder will be treated as a "**Recipient**").
- 13.5 Subject to **clauses 13.13 to 13.15**, the Recipient agrees with the Discloser that it will, and will procure that each of its Representatives will, subject to **clauses 13.6 and 13.10** and **clause 18**:
- 13.5.1 keep that Confidential Information secret and only disclose it in the manner and to the extent expressly permitted by this Agreement;
- 13.5.2 use that Confidential Information solely for the purpose of exercising or performing its rights and obligations under this Agreement or any Related Agreement and (where the Recipient is a Shareholder and the Confidential Information relates to BCPP) for the purpose of monitoring that Shareholder's investment in BCPP and compiling its own accounts and tax returns and complying with relevant regulatory requirements (each a "**Purpose**" and together the "**Purposes**");
- 13.5.3 only make such copies, summaries, extracts, transcripts, notes, reports, analyses and recordings (in any form of media) that use, contain or are based on or derived from Confidential Information as are reasonably necessary to fulfil each Purpose; and
- 13.5.4 keep that Confidential Information safe and secure and apply to it documentary and electronic security measures that match or exceed those the Recipient operates in relation to its own confidential information and will never exercise less than reasonable care.
- 13.6 The Recipient may disclose that Confidential Information to those of the Recipient's Representatives who need access to that Confidential Information to fulfil the Purposes provided that before any such disclosure:
- 13.6.1 the Recipient must make that Representative aware of the fact that the Confidential Information is confidential and the obligations of confidentiality contained in this Agreement; and
- 13.6.2 (unless the Representative is an employee, officer or elected Member of the Recipient) such Representative will enter into a confidentiality agreement with the Recipient on terms substantially equivalent to those contained in this Agreement.
- 13.7 If a Recipient makes any disclosure to one of its Representatives under **clause 13.6** the Recipient will:
- 13.7.1 take reasonable steps to procure that its Representative will not do or omit to do anything which if done or omitted to be done by the Recipient would constitute a breach of **clause 13** of this Agreement; and
- 13.7.2 be liable for the acts and omissions of its Representatives in respect of the relevant Confidential Information as if they were acts or omissions of the Recipient.

- 13.8 The Recipient of any Confidential Information may disclose that Confidential Information to the extent required by law or a court of competent jurisdiction or the rules of any applicable listing authority, securities exchange or governmental or regulatory body provided that the Recipient will where reasonably practicable and lawful:
- 13.8.1 notify the Discloser of that Confidential Information in writing in advance of such disclosure;
 - 13.8.2 consult with the Discloser as to the content, purpose and means of disclosure; and
 - 13.8.3 seek to make such disclosure subject to obligations of confidence consistent, so far as reasonably possible, with the terms of this Agreement.
- 13.9 No licence or right to use any patent, copyright, registered design, unregistered design, trademark, trade name or similar right or any right to use any Confidential Information or trade secrets is granted by any party to another party save as set out expressly in this Agreement.
- 13.10 **Clauses 13.4 to 13.9** will not extend to Confidential Information which:
- 13.10.1 at the time of disclosure was in the public domain or subsequently enters into the public domain other than as the direct or indirect result of a breach of this Agreement by the Recipient of that Confidential Information or any Recipient's Representative; or
 - 13.10.2 the Recipient can prove to the reasonable satisfaction of the Discloser of that Confidential Information from written records or other substantive evidence:
 - 13.10.2.1 has been received by the Recipient (or one of its Representatives) at any time from a third party who did not acquire it in confidence and who is free to make it available to the Recipient (or the relevant Representative); or
 - 13.10.2.2 was independently developed by the Recipient (or one of the Recipient's Representatives) without any breach of this Agreement;
 - 13.10.3 may need to be disclosed or released into the public domain by Shareholders or their representatives, given that such persons are or work for public and local authorities pursuant to relevant local authority legislation, rules and regulations.
- 13.11 **Clause 13.10.2** will not apply to the Confidential Information referred to in **clause 13.4.2**.
- 13.12 All obligations in **clauses 13.4 to 13.11** will survive termination of this Agreement without limit in time.

Freedom of Information

- 13.13 The parties each acknowledge and agree that:
- 13.13.1 each party may be regarded as a public authority for purposes of the FOIA Legislation and is therefore subject to the requirements of the FOIA Legislation, and may receive Requests for Information;
 - 13.13.2 each Request Recipient shall be responsible for determining at its absolute discretion whether:
 - 13.13.2.1 the information requested in the Request for Information is relevant to and in connection with the Agreement;
 - 13.13.2.2 a Request for Information in connection with this Agreement is valid under the FOIA Legislation, as well as all other considerations relevant in the assessment of an information request under the

FOIA Legislation, such as any considerations (as may be applicable) regarding the cost of complying with a request or any charges for responding to a request, whether the request is repeated, vexatious or manifestly unreasonable and any other relevant considerations;

- 13.13.3 any information sought (including Confidential Information) is subject to any exemption and/or exception from disclosure and/or publication in accordance with the relevant provisions of the FOIA Legislation or is to be disclosed in response to a Request for Information, and nothing in this Agreement shall remove or in any way limit that discretion of the Request Recipient; and
- 13.13.4 in some circumstances, consistent with the spirit of the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, it may not be possible or reasonable for the Request Recipient to provide notice of any Request for Information or consider the comments of the other parties in relation to it, prior to responding to such a request.
- 13.14 The other parties agree to reasonably assist and cooperate with the Request Recipient (without charge), bearing in mind always the time limits imposed under the FOIA Legislation, as notified to them by the Request Recipient, to enable the Request Recipient to comply with its obligations under the FOIA Legislation.
- 13.15 Subject to **clauses 13.13.2** and **13.13.4**, where the Request Recipient receives a Request for Information:
- 13.15.1 the Request Recipient will notify the party whose Confidential Information is the subject of the Request for Information (the "**Affected Party**") as soon as reasonably possible, confirming what Confidential Information is being requested and disclosing the Request for Information to each Affected Party; and
- 13.15.2 the Request Recipient agrees to discuss in good faith with the Affected Party as to whether a relevant exemption/exception to the requirement to disclose the relevant Confidential Information under the FOIA Legislation might be applicable, provided that the Affected Party makes itself available for such discussions within a reasonable time (and in any event within five Business Days of being notified of the Request for Information) so that the Request Recipient has a reasonable opportunity to consider the Affected Party's comments prior to the deadline for the Request Recipient to respond to the Request for Information.
- 13.16 Where a party receives a Request for Information and another party holds information or records on behalf of that party, upon request, such other party agrees to provide the first party with a copy of all such information related to the request for information, in the form that the first party reasonably requires within five Business Days (or such other period as the first party may reasonably specify) of the first party's request.

14. **TRANSFER OF SHARES**

Restrictions on transfer

- 14.1 Save as set out in this **clause 14**, no Shareholder may transfer any Shares other than pursuant to a purchase by BCPP of such Shares in accordance with the Articles, this Agreement and the Companies Act 2006, as appropriate.
- 14.2 Save as contemplated in this Agreement, each of the Shareholders undertakes that it will not create or permit to exist any Encumbrance over or in respect of all or any part of its Shares nor assign or otherwise purport to deal with its beneficial ownership in, or any right relating to, its Shares separate from the legal ownership of such Shares.
- 14.3 In the event that two or more Shareholders combine, such combined entity may only hold one (1) A Share following such combination and any other A Shares held by such combined entity or its separate, component predecessor Shareholders shall be purchased by BCPP at

par value, subject to and in accordance with the Companies Act 2006, and such combined entity shall co-operate with BCPP to effect such purchase.

- 14.4 In the event that BCPP is incapable of implementing a purchase of its own Shares as anticipated by either **clause 14.3** or **clause 15.3**, any Shareholder that would otherwise be required to sell its Share(s) back to BCPP agrees that (if required to do so by all of the other Shareholders) it shall not exercise any rights to vote, accept any dividend [that has not been declared] nor exercise any other rights attached to such Share(s) until such time as BCPP is able to and does implement the proposed purchase of the relevant Share(s).

Exiting Shareholders

- 14.5 In the event that a Shareholder wishes to cease to be a Shareholder in the Company, a Shareholder shall be required to serve a written notice on the Board of BCPP at least 12 months prior to the proposed exit date, which must be 31 March in any year unless such other date is approved by the Board and all of the other Shareholders (the "**Withdrawal Date**").

- 14.6 In the event of a Shareholder ceasing to be a Shareholder (an "**Exiting Shareholder**"), the Exiting Shareholder shall pay to BCPP, in addition to any monies owing by the Exiting Shareholder to BCPP as at the Withdrawal Date, such sum as represents the contribution to the capitalised value of that proportion of the continuing and outstanding liabilities of BCPP which have been incurred before the Withdrawal Date and which is properly attributable to the Exiting Shareholder's share membership of BCPP.

- 14.7 Thereafter, save where any defaulting Shareholder is required to cease being a Shareholder pursuant to **clause 15** (in which event the provisions of **clause 15.3** shall apply), on the Withdrawal Date:

- 14.7.1 **A Shares:** the A Shares held by the Exiting Shareholder shall be either (as agreed by the Exiting Shareholder and BCPP):

14.7.1.1 purchased by BCPP at Fair Market Value in accordance with and subject always to Part 18 of the 2006 Act; or

14.7.1.2 (without prejudice to the provisions of **clause 9.7 (Reserved Matters)** and **Schedule 1**) transferred to a new Shareholder at Fair Market Value,

within 3 months of the Withdrawal Date, the proceeds of such sale or transfer shall be paid to the Existing Shareholder (subject to the Company having sufficient reserves to do so and if it does not, at such date when it next has sufficient distributable reserves).

For the avoidance of doubt, if BCPP is unable to purchase the A Shares (as a result of insufficient distributable reserves and/or any other legal restriction in Part 18 of the 2006 Act) then BCPP shall not be under any obligation to purchase any such A Shares until such later time as the Board determines that BCPP is in a position to complete the proposed share buyback.

- 14.7.2 **B Shares:** the rights attached to B Shares in the event of a shareholder withdrawing are set out in **clause 4** above and **Article 27** of the Articles. Subject to those provisions, the proceeds of such sale or transfer shall be paid to the Exiting Shareholder within 3 months of the Withdrawal Date (subject to the Company having sufficient reserves to do so and if it does not, at such date when it next has sufficient distributable reserves).

Deed of Adherence

- 14.8 If a Shareholder transfers its Shares in accordance with this Agreement to any person other than any Exiting Shareholder (including to any Permitted Transferee) it will procure that the transferee (including any Permitted Transferee) enters into a deed of adherence substantially in the form set out in **Schedule 3**.

Registration of Transfers

14.9 The directors may refuse to register the transfer of any Share unless it is made in compliance with this **clause 14** and may request such evidence as the directors may reasonably think fit regarding any matter which they consider relevant to establish whether such transfer is permitted. If the evidence is not provided to the reasonable satisfaction of the directors within a reasonable time after it has been requested, or if in the reasonable opinion of the directors the information or evidence is false in any material respect, the directors may refuse to register the relevant transfer.

15. CONSEQUENCES OF BREACH

15.1 (Without prejudice always to the right of any Shareholder to make a claim against any other Shareholder for breach of the terms of this Agreement), a Shareholder shall be deemed to have committed an act of default (in this **clause 15** called a "**Default**") if:

15.1.1 it commits a material breach of its obligations under this Agreement which cannot effectively be remedied or which the Shareholder fails effectively to remedy within 15 Business Days of receipt of a notice in writing from a majority of the Shareholders or BCPP specifying the breach and requiring remedy; or

15.1.2 it fails to participate in two consecutive duly convened general meetings (without good reason); or

15.1.3 any of the events contained in **Article 35** (*Deemed transfers to BCPP*) occur in respect of such Shareholder.

15.2 For the purposes of **clause 15.1.1** the expression "**material breach**" means a breach of any of the terms of this Agreement which is serious in the widest sense of having a serious effect on the benefit which any other Shareholder would otherwise derive from this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

15.3 if a Shareholder (in this **clause 15** called a "**Defaulting Shareholder**") is deemed to have committed a Default, a majority of each of the other Shareholders (having considered all relevant factors including, without limitation, any FCA requirements, regulatory capital requirements and all Procurement Legislation) may at any time within 30 Business Days of becoming aware of the Default serve notice in writing (a "**Default Notice**") on the Defaulting Shareholder in which event the Defaulting Shareholder shall be required to sell its A Share back to BCPP at par value. **Clause 14.7.2** shall then apply to the redemption of the Defaulting Shareholder's B shares. In the event of any failure by the Defaulting Shareholder to co-operate with BCPP to effect such purchase, the Defaulting Shareholder hereby irrevocably and unconditionally appoints BCPP as its attorney for the purposes of executing such documents as are necessary to effect such purchase.

16. TERMINATION

16.1 This Agreement shall terminate (the "**Termination Date**") when either:

16.1.1 all the Shareholders agree in writing to its termination; or

16.1.2 BCPP passes a resolution for its winding up, is subject to an order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off or has an administrator appointed in respect of it; or

16.1.3 such number of Shareholders decide to withdraw from BCPP that a majority of the remaining Shareholders (after any such withdrawals) inform BCPP in writing (including in electronic form) that they are no longer able or willing to maintain BCPP's Regulatory Capital Requirements; or

16.1.4 the Board determines, acting reasonably, that the business of BCPP may not lawfully be continued.

17. CONSEQUENCES OF TERMINATION

Rights and Obligations

17.1 Following the Termination Date:

17.1.1 the following will continue in force: **clauses 13.4 to 13.12**, together with any other terms of this Agreement which expressly or impliedly continue to have effect after expiry or termination of this Agreement; and

17.1.2 all other rights and obligations will immediately cease but without prejudice to any rights, obligations, claims (including without claims for damages for breach) and liabilities which have accrued before the Termination Date.

17.2 As soon as practicable after the Termination Date and in any event within 20 Business Days of the Termination Date, each Shareholder will, subject to the exception set out in **clause 17.3**,

17.2.1 return to the other Shareholders all Confidential Information of the other Shareholders (including all copies and extracts) in its possession or control;

17.2.2 return to BCPP all Confidential Information of BCPP (including all copies and extracts) in its possession or control;

17.2.3 destroy or permanently erase (if technically feasible) all documents and all records (in any media) created by it or on its behalf that use, concern or are based on any Confidential Information of the other Shareholder or BCPP ("**Records**"); and

17.2.4 cease to use the Confidential Information of the other Shareholder or BCPP.

17.3 Each Shareholder may retain any Confidential Information of the other Shareholder and/or BCPP and/or Records which it has to keep to comply with any legal or regulatory requirement or which it is required to retain for insurance, accounting or taxation purposes. The provisions of **clause 13** will continue to apply to retained Confidential Information and Records, which may only be used for the purposes for which they have been retained.

17.4 Each Shareholder will, upon request, confirm to the other Shareholders and BCPP in writing that it has complied with **clauses 17.2** and **17.3**.

18. NEW SHAREHOLDERS

In the event that the Board or any of the Shareholders proposes that an additional third party shareholder (which shall be another LGPS administering authority) should subscribe for new shares in BCPP, all of the parties hereby agree and undertake to each other that no such person shall be admitted as a new Shareholder of BCPP without the prior written consent of all of the Shareholders.

19. FURTHER ASSURANCE

Each Shareholder will at its own cost execute all such documents and do all such acts and things as any of the other Shareholders may reasonably request from time to time to give each of the Shareholders full effect to the terms of this Agreement (including the rights given under it) and the transactions contemplated by it.

20. INADEQUACY OF DAMAGES

Each Shareholder acknowledges and agrees that damages alone would not be an adequate remedy for breach of the provisions of this Agreement. Accordingly, it agrees that any of the other Shareholders and/or BCPP will be entitled, without having to prove special damages, to equitable relief (including injunction and specific performance) for any breach or threatened breach of such clauses by it.

21. **NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement and no action taken by the parties in connection with it will create a partnership between the parties or give any party authority to act as the agent of or in the name of or on behalf of another party or to bind another party or to hold itself out as being entitled to do so.

22. **INDEPENDENT CONTRACTORS**

Each party agrees that it is an independent contractor and is entering into this Agreement as principal and not as agent for or for the benefit of any other person.

23. **WAIVER**

A delay in exercising or failure to exercise a right or remedy under or in connection with this Agreement will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

24. **VARIATION/AMENDMENT**

No variation or amendment to this Agreement will be effective unless it is in writing and signed by a duly authorised representative on behalf of all of the parties provided that no variation or amendment will or may invalidate the continued application to BCPP of the "Teckal exemption" codified under Regulation 12 of the Public Contracts Regulations 2015.

25. **CONFLICT WITH ARTICLES**

Where the Articles conflict with this Agreement, the Shareholders agree that this Agreement will prevail, to the intent that they will if necessary procure the amendment of the Articles to the extent required to enable BCPP and its affairs to be administered in accordance with this Agreement.

26. **CLAIMS BY OR AGAINST SHAREHOLDERS**

26.1 Where any of the Shareholders asserts any claim against BCPP (the "**Claiming Shareholder**"), the other Shareholders shall be entitled to defend such claim in the name and at the expense of BCPP.

26.2 Where any other provision of this Agreement or of the Articles conflicts with the provisions of this clause, this clause shall prevail.

27. **NOTICE**

27.1 Any notice or other communication given under or in connection with this Agreement will be in writing, marked for the attention of the specified representative of the party to be given the notice or communication and:

27.1.1 sent to that party's address by pre-paid first class post or mail delivery service providing guaranteed next working day delivery; or

27.1.2 delivered to or left at that party's address (but not, in either case, by one of the methods set out in **clause 27.1.1**).

27.2 The address and representative for each party are set out below and may be changed by that party giving at least 10 Business Days' notice in accordance with this **clause 27**.

Bedford Borough Council

Borough Hall, Cauldwell Street, Bedford, MK42 9AP
For the attention of: [●]

Cumbria County Council

The Courts, Carlisle, Cumbria, CA3 8NA
For the attention of: [●]

Durham County Council

County Hall, Durham, DH1 5UE
For the attention of: [●]

The East Riding of Yorkshire Council

County Hall, Beverley HU17 9BA
For the attention of: [Director of Corporate Resources]

Lincolnshire County Council

County Offices, Newland, Lincoln, LN1 1YL
For the attention of: [●]

Middlesbrough Borough Council

PO Box 340, Middlesbrough, TS1 2XP
For the attention of: [●]

Northumberland County Council

County Hall, Morpeth, Northumberland, NE61 2EF
For the attention of: [●]

North Yorkshire County Council

County Hall, Northallerton, North Yorkshire, DL7 8AL
For the attention of: [●]

The Council of the Borough of South Tyneside

Town Hall and Civic Offices, Westoe Road, South Shields, Tyne and Wear, NE33 2RL
For the attention of: [●]

South Yorkshire Pensions Authority

18 Regent Street, Barnsley, S70 2HG
For the attention of: [●]

Surrey County Council

County Hall, Penrhyn Road, Kingston upon Thames, KT1 2DN
For the attention of: [●]

Warwickshire County Council

PO Box 3, Shire Hall, Warwick, CV34 4RL
For the attention of: [●]

Border to Coast Pensions Pool Limited

INSERT

For the attention of: [●]

27.3 Any notice or communication given in accordance with **clause 27.1** will be deemed to have been served:

27.3.1 if given as set out in **clause 27.1.1**, at 9.00am on the 2nd Business Day after the date of posting; and

27.3.2 if given as set out in **clause 27.1.2**, at the time the notice or communication is delivered to or left at that party's address,

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

27.4 For the purposes only of this **clause 27**, references to time of day are to the time of day at the address of the recipient parties referred to in **clause 27.2**.

27.5 To prove service of a notice or communication it will be sufficient to prove that the provisions of **clause 27.1** were complied with.

27.6 This **clause 27** is subject to the provisions of the Companies Act 2006, the Articles and this Agreement regulating the giving of notices in relation to meetings of the directors or general meetings of the Shareholders.

28. **UNLAWFUL FETTER ON THE SHAREHOLDERS' STATUTORY POWERS**

Notwithstanding any other provision contained in this Agreement the Shareholders and BCCP shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any statutory power of any of the Shareholders, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

29. **COUNTERPARTS**

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

30. **COSTS AND EXPENSES**

Each party will bear its own costs and expenses incurred in connection with or arising out of the negotiation, preparation and execution of this Agreement.

31. **SEVERANCE**

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

32. **ENTIRE AGREEMENT**

32.1 This Agreement and the Related Agreements constitute the entire agreement between the parties and supersede any prior agreement or arrangement in respect of their subject matter and:

- 32.1.1 no party has entered into this Agreement in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made to the first party or any other person) which is not expressly set out in this Agreement;
- 32.1.2 no party has entered into the Related Agreements in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made to the first party or any other person) which is not expressly set out in those Related Agreements; and
- 32.1.3 nothing in this **clause 32** will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

33. **ASSIGNMENT**

Save as provided for by this Agreement or by the Articles, no Shareholder nor BCPP will be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under this Agreement.

34. **RIGHTS OF THIRD PARTIES**

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

35. **GOVERNING LAW**

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

36. **JURISDICTION**

Each party agrees that the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement (including in relation to any non-contractual obligations).

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

SCHEDULE 1

Reserved Matters

PART A – Matters for approval by all of the Shareholders (unanimous consent required)

1. subject to FCA rules, extend the activities of the Company outside the scope of the Business or close down any operation of the Business;
2. subject to FCA rules, give any guarantee or indemnity outside the ordinary course of the Business to secure the liabilities of any person or assume the obligations of any person (other than a wholly owned subsidiary) (e.g. guaranteeing a lease that does not relate to the Business of the Company);
3. subject to FCA rules, enter into or vary any contracts or arrangements with any of the Shareholders or Directors (other than service agreements and letters of appointment as directors) or any person with whom any shareholder or Director is connected (whether as director, consultant, shareholder or otherwise) (e.g. any contract which could give preferential rights to a specific shareholder);
4. enter into any agreement not in the ordinary course of the Business and/or which is not on an arm's length basis;
5. enter into or vary any agreement for the provision of consultancy, management or other services by any person which will, or is likely to result in, the Company being managed otherwise than by its Directors;
6. change the name of the Company;
7. pass a resolution or present a petition to wind up the Company or apply for an administration order or any order having similar effect in a different jurisdiction in relation to the Company unless in any case the Company is at the relevant time unable to pay its debts within the meaning of section 123 Insolvency Act 1986;
8. reduce or cancel any share capital of the Company, purchase its own shares, hold any shares in treasury, allot or agree to allot, whether actually or contingently, any of the share capital of the Company or any security of the Company convertible into share capital, grant any options or other rights to subscribe for or to convert any security into shares of the Company or alter the classification of any part of the share capital of the Company (in each case other than as expressly permitted by this Agreement and/or the Articles where no prior consent shall be required including, without limitation, pursuant to either **clause 4 (Finance & Regulatory Capital)** and/or **clause 15 (Consequences of Breach)** and/or **Article 26 of the Articles (Issue of Shares and Pre-Emption Rights)**);
9. other than as expressly permitted by this Agreement and/or the Articles, redeem or buy any existing Shares or otherwise reorganise the share capital of the Company;
10. admit any person as a member of the Company or an investor in the BCPP pool;
11. enter into any partnership, joint venture or profit sharing arrangement with any person (excluding entering into any investment or investment vehicle);
12. alter any of the provisions of the Articles or any of the rights attaching to the Shares;
13. amalgamate or merge with any other company or business undertaking;
14. sell, lease (as lessor), license (as licensor), transfer or otherwise dispose of any of its material assets otherwise than in the ordinary course of the Business;
15. appoint any Director or an alternate Director (who is not at the time a Director of the Company) of the Company in accordance with the Companies Act 2006 including, for the avoidance of doubt, the Chairman;

16. commence, settle or defend any claim, proceedings or other litigation brought by or against BCPP, except (i) in relation to debt collection (not exceeding £500,000) in the ordinary course of the Business and (ii) in relation to any investment related claims or proceedings relevant to the ACS or other collective investment vehicles;
17. take out any third party loan(s) in respect of BCPP which (in aggregate) exceed the sum of £5,000,000;
18. form any subsidiary of BCPP, or acquire any shares in any other company, whether through subscription or transfer, such that the company concerned becomes a subsidiary of BCPP;
19. determine the composition, governance arrangements and limits of authority of any and all subsidiaries of BCPP;
20. approving and adopting a Subsequent Strategic Plan (including the Annual Budget) and/or amending any such Plan; and
21. make any capitalisation, repayment or other distribution of any amount standing to the credit of any reserve of the Company or pay or declare any dividend or other distribution to the Shareholders save that no consent will be required to pay the Fixed Dividend.

PART B – Matters for approval by a Shareholder Majority only

1. enter into or materially vary any licence or other similar agreement relating to intellectual property to be licensed to or by the Company which is otherwise than in the ordinary course of the Business;
2. appoint or remove the auditors of the Company;
3. alter the Company's accounting reference date;
4. make any significant change to any of the Company's accounting or reporting practices other than conforming with any changes made to the accounting standards adopted by the Company;
5. approve the annual accounts of the Company;
6. determine the amount of, or any increase in, remuneration payable to any directors from time to time;
7. establish or amend any pension scheme (i.e. for employees of the Company);
8. subject to FCA rules, enter into any agency, distribution or similar agreement which confers or is expressed to confer any element of exclusivity as regards any goods or services the subject of such agreement or as to the area of the agreement or vary such an agreement to include any such exclusivity;
9. incur in any financial year any item or series of items of capital expenditure including finance leases (but excluding operating leases) of more than £5,000,000 (unless provided for in the Initial Strategic Plan or any Subsequent Strategic Plan);
10. enter into or vary any operating lease either as lessor or lessee, of any plant, property or equipment of a duration exceeding 5 years or involving aggregate premium and annual rental payments in excess of £100,000 (unless provided for in the Initial Strategic Plan or any Subsequent Strategic Plan);
11. adoption of (and any amendment of) any written conflicts policy;
12. approval of any conflict or potential conflict of interest any Director may have which would preclude him or her from being included in the quorum of any meeting of the Directors; and
13. removal of any Director in accordance with the Companies Act 2006 or otherwise.

SCHEDULE 2

Shared Objectives

1. To provide to [pool members/funds] a compliant and effective means of meeting the government's requirement for the pooling of LGPS funds and thereby to achieve scale, improved governance, enhanced capability and capacity to deliver infrastructure investment and fees savings and to comply with any current and future governance requirements placed on the investment function of LGPS administering authorities.
2. To operate with a common or like-minded responsible investor/Shareholder voting policy which focuses on securing high levels of corporate governance by the companies invested in.
3. To share legal ownership, control and decisive influence over BCPP and to allocate the associated costs of operating BCCP between the [pool members] in an equitable manner.

SCHEDULE 3

Deed of Adherence

This Agreement is made on

20[●●]

BETWEEN

- (1) **BCPP Limited**, a company incorporated in England and Wales (registered number [NUMBER] whose registered office is at [ADDRESS] ("**the Company**");
- (2) The persons whose names and addresses are set out in the Schedule to this Agreement ("**the Existing Shareholders**"); and
- (3) [NAME OF NEW SHAREHOLDER] whose registered office is at [ADDRESS] ("**the New Shareholder**").

BACKGROUND

This Agreement is supplemental to a shareholders' agreement dated [DATE] and entered into by [DETAILS] ("**the Shareholders' Agreement**").

The New Shareholder wishes to [subscribe for] [acquire] [A Ordinary Shares] [and] [B Ordinary Shares].

OPERATIVE PROVISIONS

1. The definitions contained in the Shareholders' Agreement will have the same meanings in this Agreement save where the context otherwise requires.
2. The New Shareholder confirms (subject to paragraph 3 below) that it has been given and read a copy of the Shareholders' Agreement and covenants with each person named in the Schedule to this Agreement to perform and be bound with effect from the date of this Agreement by all the terms of the Shareholders' Agreement as if the New Shareholder was a party to the Shareholders' Agreement as a Shareholder. By executing this Agreement all parties confirm that it is the intention that the New Shareholder shall be bound by and entitled to the benefit of the provisions of the Shareholders' Agreement as if it was a party to the Shareholders' Agreement and named in the Shareholders' Agreement as a Shareholder.
3. This Agreement may be executed in any number of counterparts, each of which when executed will be an original but together will constitute one and the same agreement.
4. This Agreement will be governed by and construed in accordance with the laws of England and Wales.
5. This document is executed as a deed and delivered on the date stated at the beginning of this Deed.

SCHEDULE

The [Existing] Shareholders

SCHEDULE 4

Conflicts

SPB to list the relevant nominated officer (ie title of person) for each authority to deal with disputes in accordance with clause 10.5.

EXECUTED AS A DEED

(but not delivered until the date hereof)
by affixing the Common Seal of:
BEDFORD BOROUGH COUNCIL
in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)
by affixing the Common Seal of:
CUMBRIA COUNTY COUNCIL
in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)
by affixing the Common Seal of:
THE COUNTY COUNCIL OF DURHAM
in the presence of:

Authorised Sealing Officer
(A permanent Officer of the County Council)

EXECUTED AS A DEED

(but not delivered until the date hereof)
by affixing the Common Seal of:
THE EAST RIDING OF YORKSHIRE COUNCIL
in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)
by affixing the Common Seal of:
LINCOLNSHIRE COUNTY COUNCIL
in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)
by affixing the Common Seal of:
MIDDLESBROUGH BOROUGH COUNCIL
in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)
by affixing the Common Seal of:
NORTHUMBERLAND COUNTY COUNCIL
in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)
by affixing the Common Seal of:
NORTH YORKSHIRE COUNTY COUNCIL
in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE

in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

SOUTH YORKSHIRE PENSIONS AUTHORITY

in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

SURREY COUNTY COUNCIL

in the presence of:

Authorised Officer

EXECUTED AS A DEED

(but not delivered until the date hereof)

by affixing the Common Seal of:

WARWICKSHIRE COUNTY COUNCIL

in the presence of:

Authorised Officer

EXECUTED as a deed (but not delivered until dated) by **BORDER TO COAST PENSIONS PARTNERSHIP LIMITED** acting by a director

Director signature:

Name:

in the presence of:

Witness signature:

Name:

Address:

.....

Occupation:

EVS Draft 18/01/2017

Company No. [●]

Articles of Association of Border to Coast Pensions Partnership Limited

Incorporated [●] 2017

Adopted by written resolution passed on [●] 2017

DRAFT BCPP ARTICLES OF ASSOCIATION 05/12/16

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DRAFT BCPP ARTICLES OF ASSOCIATION 05/12/16

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

[BORDER TO COAST PENSIONS PARTNERSHIP] LIMITED

Adopted by written resolution passed on _____ 2017

1. INTERPRETATION

1.1 In these Articles the following expressions have the following meanings unless inconsistent with the context:

"2006 Act"	the Companies Act 2006 (as amended from time to time)
"A Shares"	the ordinary shares of £1.00 each in the capital of the Company having the rights set out in these Articles in respect of Shares of that class
"these Articles"	these articles of association as amended from time to time
"B Shares"	the non-voting redeemable shares of £1.00 each in the capital of the Company having the rights set out in these Articles in respect of Shares of that class
"bankruptcy"	includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy
"Business Day"	any day (other than a Saturday or Sunday or a bank or public holiday in England)
"CRR"	the European Union Credit Requirements Regulation 575/2013 and such law, regulation or other enactment which may replace it or give effect to it in the United Kingdom upon an exit of the United Kingdom from the European Union.
"chairman of the meeting"	the Directors' Chairman in his capacity as chairman of general meetings of the Shareholders or any other person selected to chair general meetings of the Shareholders by a Shareholder Majority
"Companies Acts"	the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the Company
"director"	a director of the Company, and includes any person occupying the position of director, by whatever name called

"Directors' Chairman"	the default chairman of meetings of directors as chosen by the shareholders pursuant to Article 12
"distribution recipient"	has the meaning given in Article 38.2
"document"	includes, unless otherwise specified, any document sent or supplied in electronic form
"electronic form"	has the meaning given in section 1168 of the Companies Act 2006 but does not, for the avoidance of doubt, include communication via a website
"eligible directors"	has the meaning given in Article 8.3
"Encumbrance"	includes any interest or equity of any person (including, without prejudice to the generality of the foregoing, any right to acquire, option, right of pre-emption or right of conversion) or any mortgage, charge, pledge, lien or assignment or any other encumbrance, priority or security interest or arrangement of whatsoever nature over or in the relevant property
"Fair Market Value"	the fair market value of any Share agreed between the Board and any Shareholder or, in the event of any dispute, as determined by the auditors of the Company (or if they are unwilling to act, by an independent accountant nominated by the Board and the relevant Shareholder(s) (or, in default of which, by the President of the Institute of Chartered Accountants in England and Wales))
"fully paid"	in relation to a Share, means that the nominal value and any premium to be paid to the company in respect of that Share have been paid to the company
"FCA"	the Financial Conduct Authority and any successor body
"FCA Rules"	the Handbook of Rules and Guidance of the FCA, as amended, supplemented and replaced from time to time
"hard copy form"	has the meaning given in section 1168 of the Companies Act 2006
"holder"	in relation to Shares means the person whose name is entered in the register of members as the holder of the Shares
"instrument"	means a document in hard copy form
"Local Authorities Order"	means the Local Authorities (Companies) Order 1995
"ordinary resolution"	has the meaning given in section 282 of the Companies Act 2006
"paid"	paid or credited as paid

"participate"	in relation to a directors' meeting, has the meaning given in Article 10.1
"proxy notice"	has the meaning given in Article 51.1
"Shareholder"	a person who is the holder of a Share
"Shareholder Majority"	has the meaning given in the Shareholders' Agreement
"Shareholders' Agreement"	means the shareholders' agreement entered into on the date of the adoption of these Articles in respect of the Company (as may be amended from time to time)
"Shares"	A Shares and B Shares and any other shares in the capital of the company from time to time
"special resolution"	has the meaning given in section 283 of the Companies Act 2006
"the Statutes"	the Companies Acts as defined in section 2 of the Companies Act 2006 and every other statute, order, regulation, instrument or other subordinate legislation for the time being in force relating to companies and affecting the Company
"Strategic Plan"	The annual business plan for the Company prepared and approved by the Shareholder, as varied from time to time
"subsidiary"	has the meaning given in section 1159 of the Companies Act 2006
"Tier 1 Capital"	Capital which complies with Article 28 of the CRR
"United Kingdom"	Great Britain and Northern Ireland
"Withdrawal Date"	in respect of a Shareholder, has the meaning given in Article 34.1
"in writing"	hard copy form or, to the extent agreed (or deemed to be agreed by virtue of a provision of the Statutes) electronic form (but not to include by means of a website)

1.2 Unless the context otherwise requires, words or expressions contained in these Articles bear the same meaning as in the Companies Acts and every other statute, order, regulation or other subordinate legislation in force from time to time relating to companies and affecting the Company but excluding any statutory modification of the same not in force when these Articles become binding on the Company.

1.3 References to any statute or statutory provision include, unless the context otherwise requires, a reference to that statute or statutory provision as modified, replaced, re-enacted or consolidated and in force from time to time and any subordinate legislation made under the relevant statute or statutory provision.

2. **LIABILITY OF MEMBERS**

The liability of the members is limited to the amount, if any, unpaid on the Shares held by them.

DIRECTORS' POWERS AND RESPONSIBILITIES

3. DIRECTORS' GENERAL AUTHORITY

Subject to these Articles, the directors are responsible for the management of the Company's business and the implementing of the Strategic Plan, for which purpose they may exercise all the powers of the Company.

4. SHAREHOLDERS' RESERVE POWER

4.1 The Shareholders may, by majority consent, direct the directors to take, or refrain from taking, specified action and the directors shall not undertake any action requiring Shareholder approval as required by the Shareholders' Agreement.

4.2 No such resolution invalidates anything which the directors have done before the passing of the resolution.

5. DIRECTORS MAY DELEGATE

5.1 Subject to these Articles, the directors may delegate any of the powers which are conferred on them under these Articles:

5.1.1 to such person or committee;

5.1.2 by such means (including by power of attorney);

5.1.3 to such an extent;

5.1.4 in relation to such matters or territories; and

5.1.5 on such terms and conditions,

as they think fit.

5.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

5.3 The directors may revoke any delegation in whole or part, or alter its terms and conditions.

5.4 Notwithstanding any provision in this **Article 5**, a Director will remain responsible for any power which is delegated in accordance with this **Article 5**.

6. COMMITTEES

6.1 Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of these Articles which govern the taking of decisions by directors.

6.2 The directors may make rules of procedure for all or any committees, which prevail over rules derived from these Articles if they are not consistent with them.

7. DIRECTORS TO TAKE DECISIONS COLLECTIVELY

The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with **Article 8**.

8. **WRITTEN RESOLUTIONS OF DIRECTORS**

- 8.1 A decision of the directors is taken in accordance with this **Article 8** when a majority of the eligible directors indicate to each other by any means that they share a common view on a matter.
- 8.2 Such a decision may take the form of a resolution in writing, where a majority of eligible directors has signed one or more copies of it, or to which a majority of eligible directors has otherwise indicated agreement in writing.
- 8.3 References in this **Article 8** to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.
- 8.4 A decision may not be taken in accordance with this **Article 8** if the eligible directors would not have formed a quorum at such a meeting.

9. **CALLING A DIRECTORS' MEETING**

- 9.1 Any director may call a directors' meeting by giving not less than five Business Days' notice of the meeting (or such lesser notice as all the directors may agree) to the directors or by authorising the company secretary to give such notice.
- 9.2 Notice of any directors' meeting must indicate:
- 9.2.1 its proposed date and time;
 - 9.2.2 where it is to take place; and
 - 9.2.3 if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should simultaneously communicate with each other during the meeting.
- 9.3 Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

10. **PARTICIPATION IN DIRECTORS' MEETINGS**

- 10.1 Subject to these Articles, directors participate in a directors' meeting, or part of a directors' meeting, when:
- 10.1.1 the meeting has been called and takes place in accordance with these Articles; and
 - 10.1.2 they can each simultaneously communicate with and to the others participating in the meeting any information or opinions they have on any particular item of the business of the meeting.
- 10.2 In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or, subject to **Article 10.1.2**, how they communicate with each other.
- 10.3 If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

11. **QUORUM FOR DIRECTORS' MEETINGS**

- 11.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

- 11.2 Subject to this **Article 11**, the quorum for directors' meetings shall throughout each meeting be four directors, at least two of whom shall be non-executive directors.
- 11.3 If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision:
- 11.3.1 to appoint further directors, or
 - 11.3.2 to call a general meeting so as to enable the Shareholders to appoint further directors.
- 11.4 If there is no quorum participating in any meeting of the directors within 30 minutes after the time fixed for the meeting, the meeting shall be adjourned to such time (not being earlier than 5 Business Days after the date of the original meeting unless otherwise agreed by all the directors) as the director or directors participating in the meeting shall determine, or, in the absence of any directors participating, to such time as the chairman of the preceding directors' meeting shall determine. All directors will be notified of the adjournment. If there is no quorum participating within one hour after the time fixed for the adjourned meeting, the meeting shall be further adjourned as aforesaid. If there is no quorum participating within one hour after the time fixed for the further adjourned meeting any two directors participating shall constitute a quorum (one of whom shall be a non-executive director).
- 11.5 If, as a consequence of section 175(6) of the 2006 Act, a director cannot vote or be counted in the quorum at a directors' meeting then the following shall apply:
- 11.5.1 if the eligible directors participating in the meeting do not constitute a quorum then the quorum for the purposes of the meeting shall be reduced by one for each director who cannot vote or be counted in the quorum; and
 - 11.5.2 if despite **Article 11.5.1** the eligible directors participating in the meeting still do not constitute a quorum or there are no eligible directors then the meeting must be adjourned to enable the Shareholders to authorise any situation in which a director has a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company.

12. **CHAIRING OF DIRECTORS' MEETINGS**

- 12.1 The Shareholders shall appoint a Directors' Chairman, who shall be a non-executive director, to chair their meetings. The directors may terminate the Directors' Chairman's appointment at any time.
- 12.2 If the Directors' Chairman is not participating in a directors' meeting within 30 minutes of the time at which it was to start, the participating directors must appoint one of the non-executive directors to chair it.

13. **CASTING VOTE**

If the numbers of votes for and against a proposal are equal at a meeting of the directors, the Directors' Chairman or other director chairing the meeting shall have a casting vote.

14. **DIRECTORS' INTERESTS**

- 14.1 Subject to these Articles, the 2006 Act and any requirements of the FCA, and provided that he has disclosed to the other directors the nature and extent of any interest of his, a director:
- 14.1.1 may hold any other office or employment with the Company (other than the office of auditor); and

- 14.1.2 may, or any firm or company of which he is a member or director may, act in a professional capacity for the Company or any body corporate in which the Company is in any way interested (other than as auditor).
- 14.2 The Shareholders (by a Shareholder Majority) may authorise any conflict of interest which an interested director may have. Except for a vote under section 175(4) of the 2006 Act authorising any conflict of interest which a director or any other interested director may have, or where the terms of authorisation of such conflict provide that a director may not vote in situations prescribed by the directors when granting such authorisation, and subject in each case to any restrictions imposed by the FCA with respect thereto, a director will be entitled to participate in the decision making process for voting and quorum purposes on any of the matters referred to in **14.1.1 to 14.1.2** and in any of the circumstances set out in **Article 14.3**.
- 14.3 The circumstances referred to in **Article 14.2** are:
- 14.3.1 the company by special resolution disapplies any provision of these Articles which would otherwise prevent a director from being counted as participating in the decision-making process; or
- 14.3.2 the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 14.4 For the purposes of these Articles references to decision making processes include any directors' meeting or part of a directors' meeting.
- 14.5 For the purposes of **Article 14.1**:
- 14.5.1 a general notice given in accordance with the 2006 Act is to be treated as a sufficient declaration of interest;
- 14.5.2 a director is not required to declare an interest either where he is not aware of such interest or is not aware of the transaction or arrangement in question; and
- 14.5.3 an interest of a director who appoints an alternate director shall be treated as an interest of the alternate director.
- 14.6 Subject to **Article 14.7**, if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Directors' Chairman or other director chairing the meeting whose ruling in relation to any director other than the Directors' Chairman or other director chairing the meeting is to be final and conclusive.
- 14.7 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Directors' Chairman or other director chairing the meeting, the question is to be decided by a decision of the directors at that meeting, for which purpose the Directors' Chairman or other director chairing the meeting is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

15. **RECORDS OF DECISIONS TO BE KEPT**

The directors must ensure that the Company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

16. **DIRECTORS' DISCRETION TO MAKE FURTHER RULES**

Subject to these Articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

17. **MINIMUM AND MAXIMUM NUMBER OF DIRECTORS**

The number of directors shall not be less than four (at least two of which must be non-executive directors) and shall not exceed six.

18. **APPOINTMENT AND REMOVAL OF DIRECTORS AND COMPANY SECRETARY**

18.1 Any person who is willing to act as a director, and is permitted by law to do so and has obtained the necessary approval from the FCA to act as such, may be appointed a director by a decision of all of the Shareholders.

18.2 A person ceases to be a director as soon as:

18.2.1 that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;

18.2.2 a bankruptcy order is made against that person;

18.2.3 a composition is made with that person's creditors generally in satisfaction of that person's debts;

18.2.4 a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;

18.2.5 notification is received by the Company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms; or

18.2.6 receipt by the Company of a written notice signed by 75% or more of the Shareholders of Class A voting rights removing a director from office.

18.3 The directors shall appoint a company secretary of the Company.

19. **DIRECTORS' REMUNERATION**

19.1 Subject to these Articles, a director's remuneration may:

19.1.1 take any form, and

19.1.2 include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

19.2 Unless Shareholders (acting with a Shareholder Majority) decide otherwise, directors' remuneration accrues from day to day.

19.3 Unless Shareholders (acting with a Shareholder Majority) decide otherwise, directors are not accountable to the Company for any remuneration which they receive as directors or other officers or employees of the Company's subsidiaries or of any other body corporate in which the Company is interested.

20. **DIRECTORS' EXPENSES**

The Company may pay any reasonable expenses which the directors properly incur in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company in accordance with any expenses policy of the Company as is approved by the directors from time to time.

21. **DIRECTORS' POWERS**

The directors may procure that the Company borrow and raise money by way of borrowings on behalf of the Company but shall only do so if:

- 21.1 such borrowing shall not allow any prospective lender a right to participate in the share capital of the Company as a condition of any such borrowing or to take any Encumbrance over any of the Shares; and
- 21.2 they have obtained prior written consent of the Shareholders if the aggregate amount of any such borrowings shall exceed £5,000,000.

22. **ALTERNATE DIRECTORS**

22.1 **Appointment and removal of alternates**

22.1.1 Any director may appoint as an alternate any other director of the Company or any director may, with prior unanimous Shareholder approval, appoint as an alternate any person willing to be so appointed (each director being an "appointor") to:

22.1.1.1 exercise that director's powers; and

22.1.1.2 carry out that director's responsibilities,

in relation to participation in directors' meetings and the taking of decisions by the directors in the absence of the alternate's appointor.

22.1.2 Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the directors.

22.1.3 The notice must:

22.1.3.1 identify the proposed alternate; and

22.1.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

22.2 **Rights and responsibilities of alternate directors**

22.2.1 An alternate director has the same rights, in relation to participation in directors' meetings and the taking of decisions by the directors and in relation to directors' written resolutions, as the alternate's appointor.

22.2.2 An alternate director may act as an alternate director for more than one appointor.

22.2.3 Except as these Articles specify otherwise, alternate directors:

22.2.3.1 are liable for their own acts and omissions;

22.2.3.2 are subject to the same restrictions as their appointors; and

22.2.3.3 are not deemed to be agents of or for their appointors.

and, each alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member.

22.2.4 A director who is also an alternate director is entitled, in the absence of his appointor, to a separate vote on behalf of his appointor, in addition to his own vote on any decision of the directors (provided that his appointor is an eligible director in relation to that decision), but shall not count as more than one director for the purposes of determining whether a quorum is present.

22.2.5 An alternate director is not entitled to receive any remuneration from the Company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the Company.

22.3 **Termination of alternate directorship**

22.3.1 An alternate director's appointment as alternate terminates:

22.3.1.1 when the alternate's appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;

22.3.1.2 on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director;

22.3.1.3 on the death of the alternate's appointor; or

22.3.1.4 when the alternate's appointor's appointment as a director terminates.

23. **ALTERNATE DIRECTORS' EXPENSES**

Article 20 shall apply in relation to alternate directors.

SHARES AND DISTRIBUTIONS

24. **ALL SHARES TO BE FULLY PAID UP**

No Share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the Company in consideration for its issue.

25. **POWER TO ISSUE DIFFERENT CLASSES OF SHARES**

25.1 Subject to these Articles, but without prejudice to the rights attached to any existing Share, the Company may issue Shares with such rights or restrictions as may be determined by the prior approval of all of the Shareholders.

25.2 Subject to these Articles, but without prejudice to the rights attached to any existing Share, the Company may issue Shares which are to be redeemed, or are liable to be redeemed at the option of the Company and the directors may determine the terms, conditions and manner of redemption of any such Shares.

26. **ISSUES OF SHARES AND PRE-EMPTION= RIGHTS**

26.1 Subject to the prior unanimous approval of the Shareholders, for the purposes of section 551 of the 2006 Act, the directors are generally and unconditionally authorised to allot:

26.1.1 A Shares in the Company or to grant rights to subscribe for, or to convert any security into, A Shares up to a maximum nominal value of £[●]; and

26.1.2 B Shares in the Company or to grant rights to subscribe for, or to convert any security into, B Shares up to a maximum nominal value of £[●],

provided that this authority shall expire five (5) years after the adoption of these Articles, unless previously renewed, revoked or varied except that the Company may, before such expiry, make an offer or agreement which will or may require the allotment of Shares or the grant of rights to subscribe for, or convert any security into, shares in the Company, after such expiry.

27. RIGHTS ATTACHING TO THE SHARES

27.1 Save as otherwise provided in these Articles, the A Shares and the B Shares shall be treated as if they constituted one class of Share.

27.2 The B Shares shall not entitle any holder thereof to the payment of any dividend or other distribution of income or, subject to **Article 43.1**, capital, or otherwise.

27.3 The B Shares shall not entitle any holder thereof to receive notice of, or to attend or vote at, general meetings of the Company.

27.4 Subject to the provisions of the Statutes, the B Shares held by any Shareholder may, at the discretion of the Board, be redeemed by the Company on the Withdrawal Date with respect to that Shareholder at par value. For the purposes of this Article, the Board shall exercise its discretion in favour of any such redemption if, as at the relevant Withdrawal Date, provided that the FCA has granted permission pursuant to Article 77 of the CRR and either (i) the Company would still hold sufficient Tier 1 Capital to satisfy its regulatory capital obligations, notwithstanding the redemption of such B Shares; or (ii) prior to such redemption, the Company obtains replacement Tier 1 Capital equal to the par value of such B Shares (or such lesser amount as may be required by the FCA) (whether such replacement regulatory capital is obtained by way of a further allotment of B Shares pursuant to any agreement between the Company and its Shareholders or by such other means as may be permitted by the FCA);

27.5 Subject to the provisions of the Statutes, the Company may with the prior written consent of all of the holders of the A Shares redeem all or some of the B Shares in advance of the due date for redemption as specified in **Article 27.4** at par value.

27.6 Subject to **Article 27.4**, on the date fixed for any redemption the Company shall, subject to the Statutes, pay to each Shareholder whose B Shares are to be so redeemed an amount equal to the par value of the B Shares to be redeemed and upon receipt of that amount each such Shareholder shall surrender to the Company the certificate(s) for the B Shares to be redeemed. If any certificate surrendered is for more B Shares than are to be redeemed at that time the Company shall issue to the holder free of charge a new certificate for the balance of the Shares not redeemed.

27.7 Subject to **Article 27.4**, where the Company is precluded by the Statutes or otherwise by law from redeeming any B Shares on the due date for redemption, then:

27.7.1 the Company shall redeem, on that date, as many of the B Shares which can then, consistently with the Statutes, be redeemed by the Company; and

27.7.2 as soon as the Company is no longer precluded from doing so, the Company shall in respect of the B Shares not redeemed, redeem the maximum number of B Shares which can, consistently with the Statutes, properly be paid by the Company at that time.

27.8 The special rights conferred by the B Shares shall be deemed not to be modified or abrogated by the creation or issue of further Shares ranking pari passu or in priority to or subordinate to the B Shares.

28. **PURCHASE OF OWN SHARES**

28.1 Following any purchase by the Company of its own Shares in accordance with the provisions of the 2006 Act, and/or in accordance with the requirements of these Articles, all the purchased Shares shall be immediately cancelled.

28.2 Subject to the 2006 Act, but without prejudice to any other provision of these Articles, the Company may purchase or redeem its own Shares in accordance with Chapter 4 of Part 18 of the Act, including (without limitation) out of capital up to any amount in a financial year not exceeding the lower of:

28.2.1 £15,000; and

28.2.2 the nominal value of 5% of the Company's fully paid share capital at the beginning of each financial year of the Company.

29. **COMPANY NOT BOUND BY LESS THAN ABSOLUTE INTERESTS**

Except as required by law, no person is to be recognised by the Company as holding any Share upon any trust, and except as otherwise required by law or these Articles, the Company is not in any way to be bound by or recognise any interest in a Share other than the holder's absolute ownership of it and all the rights attaching to it.

30. **SHARE CERTIFICATES**

30.1 The company must issue each Shareholder, free of charge, with one or more certificates in respect of the Shares which that Shareholder holds.

30.2 Every certificate must specify:

30.2.1 in respect of how many Shares, of what class, it is issued;

30.2.2 the nominal value of those Shares;

30.2.3 that the Shares are fully paid; and

30.2.4 any distinguishing numbers assigned to them.

30.3 No certificate may be issued in respect of Shares of more than one class.

30.4 If more than one person holds a Share, only one certificate may be issued in respect of it.

30.5 Certificates must:

30.5.1 have affixed to them the Company's common seal, or

30.5.2 be otherwise executed in accordance with the Companies Acts.

31. **REPLACEMENT SHARE CERTIFICATES**

31.1 If a certificate issued in respect of a Shareholder's Shares is:

31.1.1 damaged or defaced, or

31.1.2 said to be lost, stolen or destroyed,

that Shareholder is entitled to be issued with a replacement certificate in respect of the same Shares.

31.2 A Shareholder exercising the right to be issued with such a replacement certificate:

- 31.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;
- 31.2.2 must return the certificate which is to be replaced to the Company if it is damaged or defaced; and
- 31.2.3 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

32. **RESTRICTIONS ON TRANSFER**

In these Articles, references to a transfer of a Share include the transfer or assignment of a beneficial or other interest in that Share or the creation of a trust or encumbrance over that Share and reference to a Share includes a beneficial or other interest in a Share.

33. **TRANSFERS NULL AND VOID**

Except for a purchase by the Company of its own Shares, or a redemption by the Company of the B Shares, in each case in accordance with the provisions of the 2006 Act and these Articles, any transfer or purported transfer of a Share shall be null and void and of no effect.

34. **EXITING SHAREHOLDER**

34.1 In the event that a Shareholder wishes to cease to be a Shareholder in the Company, a Shareholder shall be required to serve a written notice on the Board of the Company at least 12 months prior to the proposed exit date, which must be 31 March in any year unless such other date is approved by the Board and all of the other Shareholders (the "**Withdrawal Date**").

34.2 In the event of a Shareholder ceasing to be a Shareholder (an "**Exiting Shareholder**"), the Exiting Shareholder shall pay to the Company, in addition to any monies owing by the Exiting Shareholder to the Company as at the Withdrawal Date, such sum as represents the contribution to the capitalised value of that proportion of the continuing and outstanding liabilities of the Company have been incurred before the Withdrawal Date and which is properly attributable to the Exiting Shareholder's share membership of the Company in accordance with clause 14.7 of the Shareholders' Agreement.

34.3 Thereafter (save where any defaulting Shareholder is required to cease being a Shareholder pursuant to the terms of any shareholders agreement in which event those default provisions shall apply), on the Withdrawal Date:

34.3.1 **A Shares:** the A Shares held by the Exiting Shareholder shall be either (as agreed by the Exiting Shareholder and the Company):

- 34.3.1.1 purchased by the Company at Fair Market Value in accordance with and subject always to Part 18 of the 2006 Act; or
- 34.3.1.2 transferred to a new Shareholder at Fair Market Value.

For the avoidance of doubt, if the Company is unable to purchase the A Shares (as a result of insufficient distributable reserves and/or any other legal restriction in Part 18 of the 2006 Act) then the Company shall not be under any obligation to purchase any such A Shares until such later time as the Board determines that the Company is in a position to complete the proposed share buyback.

34.3.2 **B Shares:** the rights attached to B Shares in the event of an Exiting Shareholder are set out in **Article 27** above. Subject to those provisions, the proceeds of such sale, transfer or redemption shall be paid to the Existing Shareholder within [3] months of the Withdrawal Date.

35. **DEEMED TRANSFERS TO THE COMPANY**

- 35.1 If a Shareholder, or other person entitled to transfer a Share (otherwise than in accordance with these Articles), at any time attempts to transfer, deal with or dispose of a Share or any legal or beneficial interest in such Share otherwise than in accordance with **Article 27** (*Rights attaching to Shares*) (in relation to the redemption of B Shares) or **Article 34** (*Exiting Shareholder*), or if any of the events specified in **Article 35.3** or **Article 35.4** occurs in respect of a Shareholder, the provisions of **Article 35.2** shall apply.
- 35.2 Where **Article 35.1** applies to any Shareholder, such Shareholder shall be deemed to have given a transfer notice on the occurrence of such attempt or event in favour of the Company and to have specified in such transfer notice as the price per Share, the par value of each Share and the Company shall implement such transfer by way of purchase or redemption of such Shares in accordance with the 2006 Act.
- 35.3 **Article 35.2** shall apply on the occurrence of any of the following events:
- 35.3.1 any direction (by way of renunciation, nomination or otherwise) by a Shareholder entitled to an allotment or transfer of Shares to the effect that such Shares or any of them be allotted or issued or transferred to some person other than himself; or
- 35.3.2 any sale, dealing with or other disposition of any beneficial interest in a Share (whether or not for consideration or otherwise) by whomsoever made and whether or not effected by an instrument in writing except where the disposition is by service of a transfer notice in accordance with these Articles.
- 35.4 For the purpose of ensuring that no circumstances have arisen whereby a transfer notice is deemed to be given or is required to be served, the directors may from time to time require any Shareholder or past shareholder to furnish to them such information and evidence as the directors may reasonably think fit regarding any matter which they consider relevant to establish whether any circumstances have arisen whereby a transfer notice is required to be served. Failing such information being furnished to the reasonable satisfaction of the directors within a reasonable time after it has been requested, or if in the reasonable opinion of the directors any such information or evidence is false in any material respect, the directors may declare by notice in writing to the relevant Shareholder that a transfer notice shall be deemed to have been given in respect of any relevant Shares and **Article 35.2** shall apply in respect of any Shares held by such Shareholder.
- 35.5 For the purpose of **Articles 35.1 to 35.4** inclusive, the word "Shareholder" includes any former shareholder.

36. **REGISTRATION OF TRANSFERS**

The Directors may refuse to register any transfer of a Share in accordance with clause 14.9 of the Shareholders' Agreement.

DIVIDENDS AND OTHER DISTRIBUTIONS

37. **PROCEDURE FOR DECLARING DIVIDENDS**

- 37.1 The Company may by ordinary resolution declare dividends and interim dividends in accordance with the Shareholders' Agreement.
- 37.2 A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
- 37.3 No dividend may be declared or paid unless it is in accordance with Shareholders' respective rights.

- 37.4 Unless the Shareholders' resolution to declare or director's decision to pay a dividend, or the terms on which Shares are issued, specify otherwise, it must be paid by reference to each Shareholders' holding of Shares on the date of the resolution or decision to declare or pay it.
- 37.5 The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- 37.6 The Company shall, without resolution of the Board or the Company in general meeting and before application of any profits to reserve or for any other purpose, pay in respect of each B Share, a fixed cumulative preferential dividend at the annual rate of [NUMBER] per cent. of £1 per Share ("**Fixed Dividend**") which shall be paid on [DATE] in each year to the person registered as the holder of such B Shares at that date and which shall be calculated in respect of the period commencing immediately after the last such payment date and ending on (and including) the relevant payment date on a daily basis assuming a 365 day year. The first payment shall be made on [DATE] for the period from but excluding the date of adoption of these Articles to and including [DATE].

38. **PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS**

38.1 Where a dividend or other sum which is a distribution is payable in respect of a Share, it must be paid by one or more of the following means:

- 38.1.1 transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;
- 38.1.2 sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address;
- 38.1.3 sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or
- 38.1.4 any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

38.2 In these Articles, "the distribution recipient" means, in respect of a Share in respect of which a dividend or other sum is payable:

- 38.2.1 the holder of the Share; or
- 38.2.2 if the Share has two or more joint holders, whichever of them is named first in the register of members.

39. **NO INTEREST ON DISTRIBUTIONS**

39.1 The Company may not pay interest on any dividend or other sum payable in respect of a Share unless otherwise provided by:

- 39.1.1 the terms on which the Share was issued, or
- 39.1.2 the provisions of another agreement between the holder of that Share and the Company.

40. **UNCLAIMED DISTRIBUTIONS**

40.1 All dividends or other sums which are:

- 40.1.1 payable in respect of Shares, and
- 40.1.2 unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the directors for the benefit of the Company until claimed.

40.2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it.

40.3 If:

40.3.1 twelve years have passed from the date on which a dividend or other sum became due for payment, and

40.3.2 the distribution recipient has not claimed it,

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the Company.

41. **DISTRIBUTIONS**

41.1 Subject to the terms of issue of the Share in question, the Company may, subject to the terms of the Shareholders' Agreement, on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a Share by transferring non-cash assets of equivalent value (including, without limitation, Shares or other securities in any company).

41.2 For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:

41.2.1 fixing the value of any assets;

41.2.2 paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and

41.2.3 vesting any assets in trustees.

42. **WAIVER OF DISTRIBUTIONS**

42.1 Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a Share by giving the Company notice in writing to that effect, but if:

42.1.1 the Share has more than one holder, or

42.1.2 more than one person is entitled to the Share,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the Share.

CAPITALISATION OF PROFITS

43. **AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS**

43.1 Subject to these Articles, the directors may, subject to the terms of the Shareholders' Agreement:

43.1.1 decide to capitalise any profits of the Company (whether or not they are available for distribution) or any sum standing to the credit of the company's share premium account or capital redemption reserve; and

- 43.1.2 appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.
- 43.2 Capitalised sums must be applied:
- 43.2.1 on behalf of the persons entitled; and
- 43.2.2 in the same proportions as a dividend would have been distributed to them.
- 43.3 Any capitalised sum may be applied in paying up new Shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.
- 43.4 A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new [debentures] of the Company which are then allotted credited as fully paid to the persons entitled or as they may direct.
- 43.5 Subject to these Articles the directors may:
- 43.5.1 apply capitalised sums in accordance with Articles **43.3** and 43.4 partly in one way and partly in another;
- 43.5.2 make such arrangements as they think fit to deal with Shares or debentures becoming distributable in fractions under this **Article 43** (including the issuing of fractional certificates or the making of cash payments); and
- 43.5.3 authorise any person to enter into an agreement with the Company on behalf of all the persons entitled which is binding on them in respect of the allotment of Shares and debentures to them under this **Article 43**.

44. **RETURN OF CAPITAL RIGHTS**

- 44.1 The rights as regards return of capital attaching to each class of Shares shall be as set out in this **Article 44**. On a return of capital on liquidation or otherwise (except on a redemption or purchase by the Company of any Shares), the surplus assets of the Company remaining after the payment of its liabilities (including for the avoidance of doubt any debts arising from non-payment of cumulative dividends) shall be applied in the following order of priority:
- 44.1.1 all unpaid arrears and accruals of the Fixed Dividend on the B Shares to the holders of the B Shares, calculated up to and including the date the return of capital is made (such arrears and accruals being payable irrespective of whether the relevant dividend has become due and payable in accordance with the Articles) and, subject thereto;
- 44.1.2 second, in paying to each holder of A Shares and B Shares in respect of each A Share and B Share of which it is the holder, a sum equal to the par value thereof; and
- 44.1.3 the balance of such assets (if any) shall be distributed amongst the holders of the A Shares according to the amount paid up or credited as paid up on each such A Share.

ORGANISATION OF GENERAL MEETINGS

45. **NOTICE OF GENERAL MEETINGS**

Every notice convening a general meeting shall:

- 45.1 include an agenda of the meeting;

45.2 comply with section 325(1) of the 2006 Act as to giving information to Shareholders relating to their right to appoint proxies; and

45.3 be given in accordance with section 308 of the 2006 Act but shall not be given by means of a website.

46. **ATTENDANCE AND SPEAKING AT GENERAL MEETINGS**

46.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

46.2 A person is able to exercise the right to vote at a general meeting when:

46.2.1 that person (being an authorised representative of a Shareholders or a proxy of the Shareholders) is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

46.2.2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

46.3 The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

46.4 In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

46.5 Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

47. **ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-SHAREHOLDERS**

47.1 Directors may attend and speak at general meetings, whether or not they are Shareholders.

47.2 The chairman of the meeting may permit other persons who are not:

47.2.1 Shareholders of the Company, or

47.2.2 otherwise entitled to exercise the rights of Shareholders in relation to general meetings,

to attend and speak at a general meeting.

48. **QUORUM AT GENERAL MEETINGS**

48.1 No resolution shall be voted on and no other business shall be transacted at any general meeting of the Company unless a quorum is present when such vote is taken or other business is transacted and no resolution or transaction shall be effective unless a quorum is so present.

48.2 A quorum shall consist of nine in number of the Shareholders of the Company for the time being present by proxy or by representative.

48.3 If a quorum is not present within half an hour from the time appointed for a general meeting or if, during any general meeting, a quorum ceases to be present, the general meeting shall stand adjourned until such other day and at such other place as the chairman of the meeting may determine (or, if the chairman does not so determine any outstanding business to be discussed at the meeting shall be adjourned to the next general meeting) and if at the adjourned general meeting a quorum is not present within

half an hour from the time appointed for the same such adjourned general meeting, the general meeting shall be dissolved.

VOTES OF SHAREHOLDERS

49. VOTING: GENERAL

A resolution put to the vote of a general meeting must be decided on a show of hands (or equivalent open voting methodology). No resolution shall be decided on a poll.

50. ERRORS AND DISPUTES

50.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

50.2 Any such objection must be referred to the chairman of the meeting, whose decision is final.

51. CONTENT OF PROXY NOTICES

51.1 Proxies may only validly be appointed by a notice in writing (a "proxy notice") which:

51.1.1 states the name and address of the Shareholder appointing the proxy;

51.1.2 identifies the person appointed to be that Shareholder's proxy and the general meeting in relation to which that person is appointed;

51.1.3 is signed by or on behalf of the Shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and

51.1.4 is delivered to the Company in accordance with these Articles and any instructions contained in the notice of the general meeting to which they relate.

51.2 The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

51.3 Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

51.4 Unless a proxy notice indicates otherwise, it must be treated as:

51.4.1 allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and

51.4.2 appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

52. DELIVERY OF PROXY NOTICES

52.1 A person who is entitled to attend, speak or vote at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the Company by or on behalf of that person.

52.2 An appointment under a proxy notice may be revoked by delivering to the Company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

52.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

52.4 If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

53. **AMENDMENTS TO RESOLUTIONS**

53.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:

53.1.1 notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine), and

53.1.2 the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

53.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:

53.2.1 the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and

53.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

53.3 If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

54. **WRITTEN RESOLUTIONS**

54.1 A written resolution, proposed in accordance with section 288(3) of the Companies Act 2006, will lapse if it is not passed before the end of the period of 40 days beginning with the circulation date.

54.2 For the purposes of this **Article 54** "circulation date" is the date on which copies of the written resolution are sent or submitted to Shareholders or, if copies are sent or submitted on different dates, to the first of those dates.

55. **NUMBER OF VOTES**

Subject to any rights or restrictions for the time being attached to any class or classes of Shares, on a written resolution every holder of A Shares has one vote in respect of each A Share held by him and on a show of hands at a general meeting every holder of A Shares entitled to vote and who is present by a representative has one vote.

56. **COMPLIANCE WITH THE LOCAL AUTHORITIES ORDER**

56.1 The Company is a "controlled company" within the meaning of Article 4(1) of the Local Authorities Order because its Shareholders are the following local authorities (each an "Authority", together the "Authorities"):

- 56.1.1. Bedford Borough Council;
- 56.1.2. Cumbria County Council;
- 56.1.3. Durham County Council;
- 56.1.4. The East Riding of Yorkshire Council;
- 56.1.5. Lincolnshire County Council;
- 56.1.6. Middlesbrough Borough Council;
- 56.1.7. Northumberland County Council;
- 56.1.8. North Yorkshire County Council;
- 56.1.9. The Council of the Borough of South Tyneside;
- 56.1.10. South Yorkshire Pensions Authority;
- 56.1.11. Surrey County Council; and
- 56.1.12. Warwickshire County Council.

56.2 The Company shall comply with the requirements of the Local Authorities Order in so far as it relates to the Company.

ADMINISTRATIVE ARRANGEMENTS

57. COMPANY COMMUNICATION PROVISIONS

57.1 Where:

57.1.1 a document or information is sent by post (whether in hard copy or electronic form) to an address in the United Kingdom; and

57.1.2 the Company is able to show that it was properly addressed, prepaid and posted,

it is deemed to have been received by the intended recipient 48 hours after it was posted (unless the Company can demonstrate that such properly addressed (to an address in the United Kingdom) and posted document or information was prepaid by first class post in which case it shall be deemed to have been received by the intended recipient 24 hours after it was posted).

57.2 Where:

57.2.1 a document or information is sent or supplied in electronic form; and

57.2.2 the Company is able to show that it was properly addressed,

it is deemed to have been received by the intended recipient immediately after it was sent.

57.3 Pursuant to section 1147(6) of the 2006 Act, subsections (2), (3) and (4) of that section shall be deemed modified by **Articles 56.1 and 56.2.**

57.4 Subject to any requirements of the 2006 Act, documents and notices may be sent to the Company in electronic form to the address specified by the Company for that purpose and such documents or notices sent to the Company are sufficiently authenticated if the identity of the sender is confirmed in the way the Company has specified.

58. COMPANY SEALS

58.1 Any common seal may only be used by the authority of the directors.

58.2 The directors may decide by what means and in what form any common seal is to be used.

58.3 Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

58.4 For the purposes of this **Article 58**, an authorised person is:

58.4.1 any director of the Company;

58.4.2 the company secretary (if any); or

58.4.3 any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

59. **PUBLIC ACCESS TO MINUTES OF MEETINGS AND RIGHTS TO INSPECT ACCOUNTS AND OTHER RECORDS**

In accordance with the requirements of the Local Authorities Order, the minutes of any general meeting shall be made available for public inspection for a period of 4 years from the date of such a meeting.

60. **DIRECTORS' INDEMNITY AND INSURANCE**

60.1 Subject to, and so far as may be permitted by, the 2006 Act and the FCA Rules and without prejudice to any indemnity to which the person concerned may be otherwise entitled, the Company may indemnify every director, former director, alternate director, secretary or other officer of the Company or of any associated company (as defined in section 256 of the 2006 Act) against any liabilities incurred by him in the execution and discharge of his duties or the exercise of his powers or otherwise in relation to or in connection with his duties, powers or office, including any liability which may attach to him in respect of any negligence, default, breach of duty or breach of trust in relation to anything done or omitted to be done or alleged to have been done or omitted to be done by him as a director, former director, alternate director, secretary or other officer of the Company or of any such associated company and against any such liability incurred by him in connection with the Company's activities as trustee of an occupational pension scheme as defined in section 235(b) of the 2006 Act.

60.2 Subject to the 2006 Act the directors may purchase and maintain at the cost of the Company insurance cover for or for the benefit of every director, former director, alternate director, secretary or other officer of the Company or of any associated company (as defined in section 256 of the 2006 Act) against any liability which may attach to him in respect of any negligence, default, breach of duty or breach of trust by him in relation to the Company (or such associated company), including anything done or omitted to be done or alleged to have been done or omitted to be done by him as a director, former director, alternate director, secretary or other officer of the Company or associated company.

61. **REGISTERED OFFICE**

The Company's registered office is to be situated in England and Wales.

62. **LIMITED LIABILITY**

The liability of the members is limited.

DRAFT



Borders to Coast Pension Partnership Limited: Legal Opinion

1. Background

In our capacity as legal advisers to the participant funds in the pooling arrangement known as Borders to Coast Pensions Partnership (the “**BCPP Pool**”), we have been asked to provide a legal opinion to each of the administering Authorities who have agreed to participate in that arrangement to support that participation (the “**Authorities**”).

We have reviewed and commented, on behalf of the Funds, on the following documentation:

- a summary of the governance arrangements prepared by Eversheds;
- a draft Shareholders' Agreement to be entered into by each of the participating funds in their capacities as Administering Authorities of those funds and Borders to Coast Pensions Partnership Limited (“**BCPP Limited**”);
- a draft Inter-Authority Agreement (“**IAA**”) between the Authorities; and
- a draft set of Articles of Association for BCPP Limited.

We have also seen copies of three advice notes dealing with the following subjects:

- Eversheds’ advice on the basis of LGPS participation and liability in case of default dated 20 December 2016;
- Eversheds’ advice on Regulatory Capital dated 12 January 2017, and
- Deloitte’s draft advice Regulatory Capital dated 23 December 2016.

2. Compliance with relevant legislation: Corporate Structure

The participation in the BCPP Pool involves the subscription for separate classes of shares in BCPP Limited on an equal basis by each of the Authorities.¹

The creation of two classes of shares, one of which will be voting (“**A Shares**”) and one non-voting (“**B Shares**”), enables simplification of the treatment of voting and regulatory capital which is necessary for the purposes of BCPP Limited gaining appropriate authorisation from the

¹ South Yorkshire Pensions Authority will be acting on its own behalf and that of the Sheffield City Region Combined Authority, which is the administering authority for the South Yorkshire Passenger Transport Pension Fund (the “**SYPTPF**”) which, it has been decided for economic reasons, will not become a shareholder in its own right.

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Financial Conduct Authority (the “**FCA**”) in order to conduct its business i.e. as an alternative investment fund manager.

In subscribing for the shares in BCPP Limited, each of the Authorities will be using their statutory powers under the Localism Act 2011 (in particular Sections 1 and 4(2)), respectively the general power of competence and the requirement on local authorities to use a company where it does something for a commercial purpose).² The other relevant statutory powers are contained in the Local Government Pension Scheme Regulations 2013 which designate (in schedule 3) the Authorities which are required to maintain and administer pension funds.

Because the purpose of participation in the BCPP Pool is to enable the Authorities to discharge their statutory investment powers (in respect of pooling of investments) by their pension funds, it is appropriate for both the voting A shares and the regulatory capital represented by B Shares to be held as investments of the Pension Funds.

The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 (“2016 Regulations”) effectively ring-fence Pension Fund money from other assets of the Authorities under Regulation 4. This applies of course to benefit payments, which must be paid from the Pension Fund (Regulation 4(4)), but also to all income and capital gains arising in respect of investments held by the fund (Regulation 4(1) (c) and (d). Regulation 4(5) goes on to state that “any costs, charges and expenses incurred [in] administering a pension fund may be paid from it”, except for costs relating to pension sharing orders (ie relating to divorce cases). From a legal perspective we see no reason why the costs of investing in (including the future operation of) BCPP Limited cannot be charged to the Pension Fund, in the same way as other investment expenses, since these are incidental to the investment made.³

By investing in BCPP Limited and consequently the BCPP Pool, the Authorities will be complying with their other obligations under the 2016 Regulations.). Since the repeal of the previous regulations (the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009), there are no quantitative limits on the way in which each administering authority must invest its pension fund, other than a prohibition on investing more than 5% of the total value of that fund in entities which are connected with the relevant authority within the meaning of Section 212 of the Local Government and Public Involvement in Health

² As far as the SYTPF is concerned, the relevant references are to the Transport Act 1968, Sections 10A and 10B(6).

³ This is a legal, not an accounting, interpretation of Regulation 4. Please see Schedule 1 re the scope of our advice.

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Act 2007 or more generally by reference to the restriction on employment related investments under section 40 of the Pensions Act 1995. As explained in Eversheds' note on Regulatory Capital, those tests will only apply to the Authority in whose pension fund BCPP Limited participates as an employer. Those restrictions will not be breached on mathematical grounds by that Authority (one twelfth of the regulatory capital requirement of EUR10 million being significantly less than the value of any of the Authorities' pension fund assets).

Separately, there are obligations on each of the Authorities to formulate an investment strategy in accordance with Regulation 7 (the "**Investment Strategy Statement**") and to comply with any directions by the Secretary of State under Regulation 8. Each Authority's Investment Strategy Statement therefore must confirm that its participation in the BCPP Pool will discharge the statutory obligation under Regulation 7(2)(d), (i.e. to state the Authority's approach to pooling of investments, including the use of collective investment vehicles and shared services).

A further consequence of the corporate structure which is required for FCA purposes is that, because each of the Authorities will have a controlling influence over BCPP Limited, it will be a "controlled company" for the purposes of the Local Authorities (Companies) Order 1995. This (and the disclosure obligations flowing from that status) are reflected in the Shareholders' Agreement.

3. **Fiduciary duties of the Authorities**

DCLG's consultation paper on the 2016 Regulations (in their draft form) made it clear that the Government accepted that Administering Authorities, when exercising their statutory investment powers, did so under a fiduciary duty (to members and employers). There is nothing in the pooling arrangement that would conflict with that duty.

4. **Procurement compliance**

BCPP Limited is to be established as a company which is compliant with Regulation 12 of the Public Contracts Regulations 2015 (the ("**Regulations**")⁴. This allows the Authorities to enter into contracts with BCPP Limited without observing the standard requirements of the Regulations, including most importantly the requirement for an open and competitive tender. This exception applies because: (i) each of the Authorities will exercise control over BCPP

⁴ The test is commonly referred to by reference to the leading case in this area, Teckal Srl v Comune de Viano and Azienda Gas-Acqua Consorziale di Reggio-Emilia [1999], whose principles have now been codified into Regulation 12.

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Limited jointly: (ii) its activities will be carried out solely in the performance of tasks entrusted to it by the Authorities; and (iii) there will be no private capital participation in BCPP Limited.

The essential element of joint control is evidenced through the list of reserved matters which is set out in Part A of Schedule 1 to the Shareholders' Agreement. In addition, the Shareholders' Agreement specifies that the business of BCPP Limited will be to act as an alternative investment fund manager for the Shareholders (clause 2), and there will be no private investment in the company. We are accordingly satisfied that the engagement of BCPP Limited by each of the Authorities will not require the procurement of those services to be provided by BCPP Limited to be competitively tendered.

It should be noted that compliance with the conditions set out above is an ongoing requirement in order to ensure that the Authorities continue to benefit from the exception in the Regulations. Any future changes to the nature of the Authorities' control over BCPP Limited, the scope of its activities or the entry of any private capital may therefore alter this analysis. For that reason we have drafted into the amendment clause in the Shareholders' Agreement a further protection that no amendment will be permitted that would have the effect of undermining the compliance of BCPP Limited with the Regulations.

5. State Aid

Each of the Authorities will pay BCPP Limited a fee, referred to as the operating charge, which we understand is intended to cover BCPP Limited's operating costs. The method of calculating the operating charge and its likely amount have yet to be determined. From a State aid compliance perspective, on the assumption that the charge represents a commercial charge in consideration for services that BCPP Limited provides to the Authorities, at market value, and thus is a cost that a private investor in a similar position to the Authorities would expect to pay, it will not constitute State aid. In addition, if BCPP Limited will only act for the Authorities and not for any third parties (either public or private) – i.e., it will not be active on the market – any payment it receives from the Authorities is therefore not capable of distorting competition. It therefore would not constitute State aid. Since BCPP Limited will not, we understand, be tendering for business from other LGPS authorities or other investors, we do not consider that it would be active in this way.

6. Governance Model: Local Government Law Compliance

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The Inter-Authority Agreement documents the terms on which each of the Authorities will participate in a joint committee under Sections 101 and 102 of the Local Government Act 1972. The statutory framework under the above sections contains no restrictions which have been breached by the proposals set out in the Inter-Authority Agreement and the terms of reference for the joint committee are therefore in keeping with the requirements of legislation (and with good governance).

7. Other statutory compliance

Both the Shareholders' Agreement and the Inter-Authority Agreement contain requirements on the Authorities and BCPP Limited (under the Shareholders' Agreement) to comply with other legislation which is applicable to local authorities in general terms. That includes the Equality Act 2010, the Freedom of Information Act 2000, the Environmental Information Regulations 2004, anti-bribery legislation and data protection legislation. Schedule 2 of the Inter-Authority Agreement, which sets out the constitution of the Joint Committee, also makes provision for the meetings of the Joint Committee to be open to members of the public unless it is necessary to exclude the public in accordance with Part VA of the Local Government Act 1972.

8. Conclusion

Based on the draft documentation which we have seen, we are satisfied that the proposal to participate in the BCPP Pool and to subscribe for shares in BCPP Limited is in compliance with the statutory obligations which fall upon the Authorities, and there are no obstacles to the structure which has been proposed.

Squire Patton Boggs (UK) LLP
[20] January 2017

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APPENDIX 1: Scope of Advice

- 1 The advice in this report is provided only to the administering authorities participating funds (the “**Authorities**”) in Border to Coast Pension Partnership Limited (“**BCPP**”). It was prepared solely for the purpose of assisting the Authorities in accordance with the scope of our appointment to advise them on participating in BCPP. It is not advice to any other connected or stakeholder parties, auditors or other advisers, or other third parties (“**Third Parties**”). No part of this advice may be passed on to Third Parties without our written agreement but, if it is so passed, we accept no responsibility, and will have no liability in contract, tort or otherwise, to those Third Parties in relation to this advice.
- 2 This advice only considers the legal issues in relation to the proposed investment in BCPP by the Authorities. We have reached our conclusions based on an understanding of the law as at the date of this report. Accordingly, it is possible that this report will need to be updated if the law changes. However, we will only do so if we are specifically instructed to do so. We have not considered or advised on the tax efficiency of the matter or its commercial or accounting implications where we understand the Authorities have taken separate advice from Deloitte.
- 3 The documents on which this advice has been based are as set out in paragraph 1 of the report above. In accepting instructions from the Authorities we have not undertaken to review, nor are we responsible for reviewing, all or any elements of any other documentation (unless specifically agreed in writing) which may be relevant to specific Authorities. In particular, it is not within the scope of our appointment to review the constitutional documents of any of the Authorities. Accordingly, we do not accept liability should our advice be based on erroneous assumptions or documents or information with which we have not been provided.