

NORTH YORKSHIRE COUNTY COUNCIL

PENSION FUND COMMITTEE

31 MARCH 2017

LGPS POOLING ARRANGEMENTS

Report of the Treasurer and the Assistant Chief Executive (Legal and Democratic Services)

1.0 PURPOSE OF REPORT

- 1.1 To ask Members to approve the legal documents necessary to give effect to the Council's decision to be a member of the Border to coast Pensions Partnership (BCPP).

2.0 RECENT EVENTS

- 2.1 On 26 January 2017 a special PFC meeting was held for Members to make a recommendation to the Council's Executive to make a proposal to Full Council to formally join the Border to Coast Pension Pool (BCPP).
- 2.2 On 31 January 2017 these recommendations went to the Executive so that they could make the proposal to Full Council. The recommendations were approved by Executive.
- 2.3 On 15 February 2017 the Council approved the proposal subject to amendments, identified below in bold.
- i) Recommendation 6: Authorising the Assistant Chief Executive - Legal and Democratic Services **in consultation with the Pension Fund Committee** to make the consequential changes required to the Constitution to reflect these new arrangements.
 - ii) Recommendation 7: Authorise the Assistant Chief Executive – Legal and Democratic Services in consultation with the Corporate Director – Strategic Resources **and the Pension Fund Committee** to finalise the approval and execution, where required, of all legal documents necessary to give effect to the above decisions.
- 2.4 The amendments to the Recommendations were made to reflect the position at the time of the meeting, being that the legal documents (the Inter-Authority Agreement, Shareholder Agreement and BCPP Limited Articles) were in draft form only, with a number of issues still to be resolved and clarified. It was considered that these issues were of enough significance that a review of the completed documentation was required before the

Council should sign the relevant documents. It was also considered that this review be undertaken by the Council Solicitor in consultation with the PFC and the Corporate Director – Strategic Resources .

- 2.5 Full Council approval has been given by all 12 BCPP Partner Funds on the dates in the table below, in each case subject to the activity described in paragraph 2.3 but without the bold text.

South Yorkshire Transport Fund	13th February 2017
Teesside Pension Fund	15th February 2017
Cumbria Pension Fund	16th February 2017
South Yorkshire Pension Fund	16th February 2017
Durham Pension Fund	22nd February 2017
Northumberland Pension Fund	22nd February 2017
East Riding Pension Fund	22nd February 2017
Lincolnshire Pension Fund	24th February 2017
Tyne & Wear Pension Fund	9th March 2017
Surrey Pension Fund	21st March 2017
Warwickshire Pension Fund	21st March 2017
Bedfordshire Pension Fund	22nd March 2017

- 2.7 It has taken a significant amount of time to finalise the legal documents. This is due to the inevitable complexities of having to have an agreed position between 13 administering authorities, their legal adviser Squire Patton Boggs and the legal adviser acting in the interests of the pooling entity, Eversheds.
- 2.8 The latest version of the documents are attached as appendices along with a briefing note that explains the changes made since the versions that went to Full Council.
- i) Appendix 1, Briefing Note
 - ii) Appendix 2, the Inter-Authority Agreement
 - iii) Appendix 3, the Shareholder Agreement
 - iv) Appendix 4, Articles of Association of BCPP Limited

Review of documents in line with various Industry recognised Governance Standards

- 2.9 Concern was raised previously by the PFC regarding ensuring that appropriate governance standards were considered in drafting the documentation. Therefore a number of codes have been considered in reviewing the documentation.
- 2.10 The European Confederation of Director’s Association’s Corporate Governance Guidance and Principles for Unlisted Companies in Europe

provides a useful guide on good governance for companies that are not listed on the Stock Exchange. This Guidance can be found at:

<http://ecoda.org/uploads/media/GUIDANCE - 2010 CG for Unlisted - EU.pdf>

- 2.11 This guidance recognises that good corporate governance for some unlisted companies is not about protecting the investment rights of new shareholders, but ensuring that existing shareholders have appropriate protections and reliance on good governance.
- 2.12 The UK Corporate Governance Code (which can be found at: <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-April-2016.pdf>) applies to all companies with a Premium listing of equity shares and not all the provisions are applicable to smaller companies. It is proposed that the BCPP will not be a listed company where the public can buy shares and therefore this code does not legally apply to the company but it is equally important to have strong governance arrangements for unquoted companies. It is the view of the Institute of Chartered Secretaries and Administrators that a new code is not needed for private companies but that the “*should simply be expected to have more areas where they depart from the existing UK Corporate Governance Code.*”
- 2.13 The Code provides a list principles and is not a rigid set of rules. It provides that for listed companies, the board should report to the shareholders how they have complied with the principles and explain where they have deviated from the principles.
- 2.14 It should be noted that the Code for **listed** companies recommends that the board should include an appropriate combination of executive and non-executive directors (and in particular, independent non-executive directors) such that no individual or small group of individuals can dominate the board’s decision taking. In addition it provides that “*Except for smaller companies, at least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent. A smaller company should have at least two independent non-executive directors.*”
- 2.15 It is currently proposed that BCPP will consist of 6 board members consisting of a non-executive Chair, two further non-executive Directors and 3 executive Directors. If BCPP was a listed company, then even with the Chair’s casting vote, this would be a deviation from the Code’s recommendations. However in the circumstances of this company it is considered that appropriate protections are afforded to the Shareholders to not insist of a majority of independent non-executive directors. Further protections are provided in the operation of the Company where the Pension Fund Committee has the ultimate decision in deciding what it wants to invest in and the Shareholders having the power to remove the Directors from the Board.

- 2.16 A similar approach to the Code is adopted by the G20/OECD Principles of Corporate Governance which states that “*The Principles focus on publicly traded companies, both financial and non-financial. To the extent that they are deemed applicable, they might also be a useful tool to improve corporate governance in companies whose shares are not publicly traded*”. A full set of these principles can be found at: <http://www.oecd-ilibrary.org/docserver/download/2615021e.pdf?expires=1490721981&id=id&acname=quest&checksum=3FB575673CCBEC1516EF14ACCB3BDD32>
- 2.17 In addition the AIC Code of Corporate Governance looks at the Governance of Investment Companies, which again does not strictly apply to BCPP but is useful to consider, as it states: “*Investment companies have special factors which have an impact on their governance arrangements....Firstly the customers and shareholders of an investment company are the same, thus simplifying stakeholder considerations while magnifying the importance of this group’s concerns.*” (see http://www.theaic.co.uk/sites/default/files/hidden-files/AICCodeofCorporateGovernanceJUL16_0.pdf) . However given the circumstances of such investment companies, this particular Code focuses on ensuring the Board’s independence.
- 2.18 In considering a number of industry standards and in recognising the importance of good governance, the attached documents have been reviewed in line with a range of codes and are recommended for approval.

3.0 **RECOMMENDATION**

3.1 Members to approve:

- i) the Inter-Authority Agreement (Appendix 2)
- ii) the Shareholder Agreement (Appendix 3)
- iii) the Articles of Association of BCPP Limited (Appendix 4)

3.2 Members to 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
Treasurer
Central Services
County Hall
Northallerton

BARRY KHAN
Assistant Chief Executive
(Legal and Democratic Services)

28th March 2017

28th March 2017

Briefing Note

Border to Coast Pension Partnership

Proposed Changes to Core Legal Documents

INTRODUCTION

In January 2017 there was an extended period of negotiation of the core legal documents underpinning the establishment of the BCPP Joint Committee and Operating Company. That resulted in draft documents together with an explanatory note and a legal opinion being circulated to the Partner Funds to facilitate the internal approval process. Those documents were circulated by email on 25 January 2017. No changes have been agreed to those documents subsequently and all of the Partner Fund approvals have been obtained on the basis that the documents will be completed substantially in the form circulated.

All of the resolutions to proceed with the establishment of the pool contain a provision reserving final approval of the documents to individuals in the Partner Funds – usually the s151 Officer – save for one exception where final approval is reserved to the Pensions Committee.

In the period since the circulation of the “best” drafts discussions have continued and feedback has been received from Partner Funds. In the light of that feedback and in particular to address concerns about the operability of the Company it is now proposed to promote some amendments to the core documents for approval by the delegated officers/bodies.

The purpose of this note is to provide a narrative for use by Members and the partner funds in considering those further changes without having to re-visit entire documents.

INTER AUTHORITY AGREEMENT

The changes to the IAA are minimal.

Clause 7 has been amended to reflect the decision of MSG and the agreement of the affected Authorities that the South Tyneside Council act as Host Authority until further notice and that South Yorkshire Pension Authority should provide the Secretary to the Committee and associated services. The costs of these services will be borne equally between the Partner Funds.

The Joint Committee constitution has had an additional power added to it (at para 8.). This power permits the Joint Committee to co-opt any additional members that it sees fit on a non-voting basis. It is not contemplated that there will be any immediate need to rely on this provision but it allows the flexibility to do so in the future by approval of the JC only and without further reference to Partner Funds and their respective administering authorities.

ARTICLES OF ASSOCIATION

The changes to the Articles of Association are driven by a wish to “future-proof” the constitution of the Company to a degree. During the Council approval process it became clear that there was a

possibility that we might require additional non-exec directors to ensure that all of the necessary committees can be populated. Whilst there is little appetite and no intention to increase the size of the Board (and by extension its cost) it was felt prudent to increase the maximum number of directors to eight whilst initially only intending to have a board of six (Art. 17) and the quorum now requires 50% of directors present to be non-execs and not 2 (Art 11.2) which ensures good governance of having a majority of non execs taking onto account the chair's casting vote.

Article 18.2.6 has been added to deal with Interim Directors created under the Shareholder Agreement – see below

SHAREHOLDER AGREEMENT

The Shareholder Agreement has undergone the most alteration and it is easier to describe the rationale for this. Most of the changes come about because of a change in expectation for the timing of appointment of the Chair, the CEO and the other Board members. We will not have any of these available at the time of incorporation and so we have amended the agreement to take account of this and to allow the Company to be as fully formed and functional as possible as quickly as possible. In order to do that we have provided for an initial appointment of four non exec “placeholder” directors recruited from the Fund's s151 and Monitoring Officers. There are a number of changes made to reflect this including a new definition of “interim director” (also Clause 7)

In order to allow for completion arrangements predicated on the above clause 3 has been amended and now allows for the A shares to be issues and the B shares only to be issued when the Regulatory Capital is required. It also provides for the appointment of the Interim Directors.

The other major change to the circulated draft is to push certain decisions in the ongoing operation of the company from 100% decision to “shareholder majority” decisions. This has been understood in the Pool for some time but was not provided for in the original draft documents. For the avoidance of doubt this now means that the first “proper” set of Board members will be subject to 100% approval and any changes to that will be a 75% issue. The approval of the first business plan will again be a 100% issue and then subsequent plans will require only shareholder majority approval.

The Auditor and Banker appointments are now later in the timetable hence the change to Clause 6.7 and 6.10. These are still shareholder matters.

Clause 9.1 had been left in the alternate – Primarily/exclusively invest through the pool. I have deleted “exclusively” as it is acknowledged that there will be some investments for some funds that lie outside the pool and will remain so.

David Hayward

23.III.17

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

SPB amendments/comments 16 January 2017

Eversheds amendments/comments 19th January 2017

Draft version for distribution to councils 25 January 2017

[Draft subject to final review and finalising items in square brackets]

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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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THIS AGREEMENT is made on

2017

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 Specified Function.

- (E) The Authorities have entered into this Agreement in reliance inter alia: 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; in order to discharge their functions to administer, maintain and invest their respective funds (and, in the case of South Yorkshire Pensions Authority on behalf of Sheffield City Region Combined Authority), together with, where applicable, the general power of competence within section 2 of the Localism Act 2011 (and section 12 of that Act in relation to the Sheffield City Region Combined Authority) 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
“BCPP Pool”	the collective term for the one or more collective investment vehicles run and operated by BCPP to allow the administering authorities to pool their respective investments
“Business Days”	a day that is not a Saturday, Sunday or public or bank holiday in England or Wales
“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 Protection Authority"	means any organisation which is responsible for the supervision, promotion and enforcement of the Data Protection Legislation, including the Information Commissioners Office (or any joint, like, replacement or successor organisation from time to time)
"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 the DPA and where applicable, EU Directive 95/46/EC, 2002/58/EC, and the GDPR (amongst others) as implemented by the applicable local laws, including the DPA, 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 relating to this Agreement which may be: <ul style="list-style-type: none"> - 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) - or otherwise does not fall to be disclosed because it is vexatious or compliance with the Information Request would exceed an applicable time and costs limit specified within the FOI Legislation - 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 or relevant government departments, 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 which will be called the Border to Coast Pension Partnership Joint Committee
"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
"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 BCPP Pool and which regulates certain aspects of the affairs and their dealings with BCPP

"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 BCPP Pool related activity where a legal persona is required to act.

7.2 From the Commencement Date the Council of the Borough of South Tyneside shall be designated as Host Authority

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7.3 The Host Authority working in conjunction with the Secretary will propose a budget for the operation of the Joint Committee for approval by the Joint Committee.

7.4 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.

7.5 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.

7.1 From the Commencement Date the Joint Committee will designate an officer of the South Yorkshire Pensions Authority as Secretary to the Joint Committee.

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7.2

7.3 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; and

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 BCPP 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, and that the Authorities intend to comply with their obligations under the FOI Legislation, 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, in 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 in its own capacity and available for its unconditional use, 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 to appropriate firms or audit bodies 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 to the extent technically practicable 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 withdrawal from or termination of this Agreement, return all the Agreement Personal Data to the Data Controller(s) and securely delete to the extent technically practicable 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, including in particular when a party acts as a Data Controller or Data Processor; 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. For the avoidance of doubt, nothing in this clause 17.2, shall require an Authority to provide information, if the relevant information has not been held on behalf of the Authority that received the Information Request.

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:
**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

BCPP DRAFT IAA 05/01/2016

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 of the collective investment vehicles comprised in the BCPP Pool.
2. The Joint Committee will provide effective engagement with the Authorities as the BCPP 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 each Authority.
- 1.4 The remit of the Joint Committee is:
 - 2.1 **First Phase – Period to April 2018 or operational commencement of the BCPP Pool (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 the Authorities To scrutinise and monitor project management arrangements and proposals for the appointment of advisers by the Authorities.
 - 2.1.3 To oversee costs to deliver the BCPP Pool, obtaining approval from individual Authorities where necessary.
 - 2.1.4 To monitor and scrutinise responsibilities for delivery of the project and relevant support arrangements.
 - 2.1.5 To oversee and provide feedback on positions and conclusions deriving from work streams adopted by the Officer Operations Group.
 - 2.1.6 To formulate processes and policies for appointment and termination of membership to the Joint Committee.
 - 2.1.7 To propose and confirm contracts and policies required by the Authorities to commence transition to the BCPP Pool arrangements.
 - 2.1.8 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.
 - 2.1.9 To consider the initial range of sub-funds to be provided by the ACS and to make recommendations to the BCPP Board for the creation of those sub funds
 - 2.1.10 To review and comment on the draft ACS prospectus and supporting documents on behalf of the Authorities prior to the Financial Conduct Authority approval.
 - 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 ACS sub funds (or new collective investment vehicles) and to make recommendations to the BCPP Board as to the creation of additional sub funds (or new collective investment vehicles).

- 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 review and comment on the draft application form for each additional individual ACS sub fund on behalf of the Authorities prior to the Financial Conduct Authority approval (or the draft contractual documents for any new collective investment vehicle).
- 2.2.5 To formulate and propose any common voting policy for adoption by the Authorities and to review and comment on any central policy adopted by BCPP.
- 2.2.6 To formulate and propose any common ESG/RI policy for adoption by the Authorities and to review and comment on any central policy adopted by BCPP.
- 2.2.7 To formulate and propose any common conflicts policy for adoption by the Authorities and to review and comment on any central policy adopted by BCPP.
- 2.2.8 To agree on behalf of the Authorities high level transition plans on behalf of the Authorities for approval by the Authorities for the transfer of BCPP Pool assets.
- 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.

3.

BCPP DRAFT IAA 05/01/2017

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.
8. [The Joint Committee may co-opt such other persons as it sees fit to be members of the Joint Committee but without power to vote.](#)

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Proceedings

9. 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.

10. 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.

11. Chair, Vice Chair and Secretary of Joint Committee

- 11.1 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.

- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 The Secretary shall provide legal and secretariat services to the Joint Committee.
12. **Quorum**
- The quorum of a meeting will be at least 8 members who are entitled to attend and vote.
13. **Voting**
- 13.1 **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.
- 13.2 **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.
- 13.3 **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.
14. **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.
15. **Public Access**
- 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.

15.1 **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.

15.2 **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.

16. **Overview and Scrutiny**

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

17. **Regulation of Business**

17.1 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.

17.2 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 BCPP 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.

BCPP DRAFT IAA 05/01/2016

SCHEDULE 4

Shared 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 BCPP between the pool members in an equitable manner.
4. Following the transitioning of assets to the BCPP Pool, the Authorities shall primarily but not exclusively invest their LGPS pension 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).

BCPP DRAFT IAA 05/07/2016

EVS Draft (18/01/17)**SPB Draft 18.01.2017**

Eversheds and SBP amendments 24/01/2017
 [Draft to be circulated to Councils]

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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

[Draft subject to final review and finalising items in square brackets]



29 March 2017

014-3494-8125/3/EUROPE

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DRAFT BCPP SHAREHOLDERS AGREEMENT

014-3494-8125/3/EUROPE

THIS AGREEMENT is made on

2017

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 Investment Regulations.
- (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
"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 Share Dividend"	has the meaning given in the Articles

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"B Shares"	the B ordinary shares of £1.00 each in the capital of BCPP having the rights set out in the Articles
"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 3.1 ,
"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

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	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
"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 and covering the period of setting up of the regulated vehicle and its first year of actual operation as an investment company
"Inter Authority Agreement"	the agreement between the Shareholders to cooperate in the pooling of LGPS investments dated [•]
"Interim Directors"	the four interim directors appointed by the Company on incorporation to form the Board of Directors until permanent appointments are made and who, for the avoidance of doubt, shall be non-executive directors
Investment Regulations	The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016
"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

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"Regulatory Capital Requirements"	the requirements under Article 9 of the Alternative Investment Fund Managers Directive 20011/61/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"	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
"Request for Information"	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
"Request Recipient"	a party that receives a Request for Information
"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 2
"Shareholder Majority"	the holders of 75% or more of the A Shares from time to time
"Shareholder Reserved Matters"	the A List Reserved Matters and the B List Reserved Matters
"Shareholders"	any holder of Shares and "Shareholder" will mean any of them
"Shares"	shares in the capital of BCPP and "Share" will be construed accordingly
"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 (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

"Subsequent Strategic Plan" the Strategic Plan for any Financial Year other than the first Financial Year

"Subsidiary/ies" 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:

- (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 ~~an A Share to each of the Shareholders;~~

3.1.2

3.1.3 a meeting or meetings of the Board shall be held at which (i) the shares specified in **clause 3.1.1** will be allotted and issued to the Shareholders respectively and registered in their names ~~and (ii) the following Interim Directors shall be appointed:~~

Name	Title
[•]	Interim Chair
[•]	Interim Director
[•]	Interim Director
[•]	Interim Director

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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 ~~After completion of the matters referred to in **clause 3.1** and once FCA approval has been obtained, each of the Shareholders will:~~

3.3.1 ~~subscribe in cash for B Shares in accordance with FCA requirements as to regulatory capital required for FCA registration and in such numbers as is unanimously agreed between the Shareholders; and~~

3.3.2 ~~each Shareholder will waive any rights of pre-emption which any of them may have in respect of such subscriptions.~~

3.4 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

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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 B Share 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 Subject to **clause 5.1**, 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 **Subject to clause 5.1**, 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 the date of Completion or as soon as is reasonably practicable **thereafter** given the development of the operating model for the Company 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

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the commencement of the Financial Year to which it relates. The Subsequent Strategic Plan will be updated when approved in accordance with **clause 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 ~~The Interim Directors may appoint~~ the auditors of BCPP ~~(in consultation with the Shareholders) and once appointed, may be~~ removed from office and replaced in accordance with **clause 9**.

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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 ~~The Interim directors may appoint~~ the bankers to BCPP ~~(in consultation with the Shareholders) and once appointed may be~~ changed in accordance with **clause 9**.

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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 Interim Directors appointed on Completion. The Interim Directors ~~may~~ be replaced ~~in~~ accordance with **Part A of Schedule 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 B of Schedule 1**. The Company Secretary (if any) shall be appointed by the Board.

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Role and responsibilities

- 7.2 The Interim Directors shall form the Board ~~to take care of administrative matters in respect of the Company~~ until ~~their replacement with executive Directors~~, to allow the Board to

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function in accordance with the Articles. The Interim Directors shall only act in accordance with the wishes of the Shareholders from time to time.

- 7.3 The Board once fully constituted 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.
- 7.4 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:
- 7.4.1 transact the Business on arm's length terms; and
- 7.4.2 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
- 7.4.3 comply with the provisions of **clause 8**.
- 7.5 The specific responsibilities of the Chief Executive will be determined by the Board from time to time.
- 7.6 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

- 7.7 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

- 7.8 The Shareholders shall be required to approve the continuing appointment of all directors at each annual general meeting of BCPP in accordance with the provisions in **Part B of Schedule 1**.
- 7.9 In the event that any director appointment is not approved by 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;

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- 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 shall be four directors participating in the meeting, provided at least two of whom shall be 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.

Chair

- 8.12 The first Chair shall be appointed by all of the Shareholders in accordance with Schedule 1 Part A. Thereafter, the position of Chair 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 Chair is not present at any Board meeting, the directors present may appoint any one of their number to act as Chair for the purpose of the meeting. The Chair of the Board will have a casting vote on any tied decision.

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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 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 Chair (who shall be the Chair 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 to discharge its statutory obligations under Regulation 7(2)(d) of the Investment Regulations (to include its approach to pooling investments within its investment strategy statement) ~~primarily~~ via the Business;
- 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 vehicles 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 Chair 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 Chair 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.

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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 the Section 151 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 Section 151 Officer 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. Reasonable steps should, where appropriate, be taken to give other parties advance notice, or failing that, to draw it to such parties' attention afterwards.

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 Existing 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 Existing 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.
- 16.2 If the Shareholders pass a resolution pursuant to this Agreement or otherwise to wind up the Company by way of a members' voluntary winding-up they shall procure that the liquidator is a member of the Institute of Chartered Accountants in England and Wales acceptable to all the Shareholders and in default of agreement nominated at the request of any Shareholder by the President from time to time of such Institute.
- 16.3 Except to the extent each party has contractual obligations to the contrary, the Shareholders shall prove in the winding-up of the Company to the maximum extent permitted by law for all sums due or to fall due to them respectively from the Company and shall exercise all rights of set-off and generally do all such other acts and things as may be available to them in order to obtain the maximum receipts and recoveries.

16.4

To the extent that any or all of the Shareholders do not receive satisfaction in full in the winding-up of the Company of all sums due or to fall due to them the aggregate shortfall between all sums due or to fall due to the Shareholders and all amounts actually recovered by the Shareholders from the Company or its liquidator (whether by direct payment or the exercise of any right of set-off or otherwise) shall be calculated and apportioned between the Shareholders in the same proportions as the Shareholders hold Shares at the time of the determination. The Shareholders shall make such contributions to each other as are necessary to procure that the Shareholders bear the aggregate amount of such shortfall in such proportions.

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 BCPP 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.

DRAFT BCPP SHAREHOLDERS 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. the removal and replacement of any Interim Directors, but for the avoidance of doubt not including any subsequent or replacement appointments of any director which shall be made under Part B below;

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Deleted: appointment to the Board of all directors of the Company appointed in the set up phase of the Company including for the avoidance of doubt the CEO, CIO, COO Non-executive Chair and two additional non executive directors in accordance with the Companies Act 2006 including

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 ~~the Initial~~ Strategic 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 B Share Dividend.

Deleted: a Subsequent

Deleted: (including the Annual Budget) and/or amending any such Plan

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;
13. appointment of any subsequent director, any alternate director (who is not at the time a director of the Company) and including, for the avoidance of doubt any subsequent Chair in accordance with the Companies Act 2006 or otherwise; and
- ~~14.~~ removal of any director and, for the avoidance of doubt, the Chair in accordance with the Companies Act 2006 or otherwise.
15. [Approval or adoption of Subsequent Strategic Plans and Annual Budgets and/or amending the same](#)

SCHEDULE 2

Shared Objectives

1. To provide the administering authorities 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 all 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 BCPP between the administering authorities 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

[David Hayward to list the relevant 151 Officer (i.e. title of person) for each authority to deal with disputes in accordance with clause 10.5.]

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014-3494-8125/3/EUROPE

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
SBP Draft 18/01/2017
Eversheds and SBP amendments 24/01/2017
[Draft to be circulated to Councils]
DH additions 21.03.17

Company No. [●]

Articles of Association of Border to Coast Pensions Partnership Limited

Incorporated [●] 2017
Adopted by written resolution passed on [●] 2017

[Draft subject to final review and finalising items in square brackets]

bir_corp\3799181\4
25 January 2017

014-3494-8616/3/EUROPE

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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 Share Dividend"	has the meaning given in Article 37.5
"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 Shareholder Majority or unanimous 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 50% 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 disappplies 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 half of which must be non-executive directors) and shall not exceed eight.

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 the Shareholders in accordance with the Shareholders' Agreement.

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 [save for an Interim Director \(as defined in the Shareholders' Agreement\) who may be removed on receipt by the Company of a written notice signed by 100% of the Shareholders of Class A voting rights.](#)

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 approval of 75% or more of the Shareholder, 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 Subject to Articles 37.5the 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. The A Share shall not entitle any holder thereof to any payment of the B Share Dividend.

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 declare dividends and interim dividends in accordance with the Shareholders' Agreement and **Article 37.5**.

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 Company shall without resolution of the Board or the Company in general meeting and before (i) payment of any other dividend or distribution; and (ii) application of any profits or for any other purpose, pay in respect of each B Share, a dividend ("**B Share Dividend**") which shall be declared within [one month or at a later date as agreed] ("**Dividend Declaration Date**") of the end of the financial year to which it relates, and paid within [one month or at a later date as agreed] ("**Dividend Paid Date**") of the end of the financial year to which it relates to the person registered as the holder of such B shares on the Dividend Declaration Date. The amount of the B Share dividend in any one financial year will be the equivalent of the return actually received by the Company in respect of its investment of the B Share capital (in investments in which such regulatory capital is permitted to be held), subject to:

37.5.1 not reducing the level of the B Share capital below the minimum level required under CRR and any law or regulation in force from time to time and governing the minimum amount of regulatory capital which the Company is required to maintain; and

37.5.2 the Company having the profits available for distribution.

37.6 Where the Company is precluded by the 2006 Act or otherwise by law from paying in full any B Share Dividend on any date specified in **Article 37.5**, then in respect of any such dividend which would otherwise require to be paid pursuant to these Articles on that date:

37.6.1 the Company shall pay, on that date, to the holders of the B Shares on account of the B Share Dividend the maximum sum (if any) which can then, consistent with the 2006 Act, be paid by the Company; and

37.6.2 as soon as the Company is no longer precluded from doing so, the Company shall pay in respect of the B Shares pay on account of the balance of the B Share Dividend for the time being remaining outstanding, and until all arrears, accruals and deficiencies of the B Share Dividend have been paid in full, the maximum amount of B Share Dividend which can, consistent with the 2006 Act, properly be paid by the Company at that time.

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;

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- 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 (excluding the B Share Dividend) 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 B Share 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 pro rata 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.

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