
Dated: 2017

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

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

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BETWEEN

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

together called "the Authorities"

BACKGROUND

WHEREAS

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

- (E) The Authorities have entered into this Agreement in reliance on the rights given to local authorities to undertake administrative arrangements of this nature in sections 101, 102, 103, 112 and 113 of the Local Government Act 1972 and the Regulations made under these Acts; together with the general power within section 2 of the Localism Act 2011 and the supporting provisions within section 111 Local Government Act 1972.

OPERATIVE PROVISIONS

IT IS HEREBY AGREED AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

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

"ACS"	an authorised contractual scheme within the meaning of section 235A of the Financial Services and Markets Act 2000
"Agreement"	this Agreement
"Agreement Personal Data"	the Personal Data which is processed by the Authorities pursuant to this Agreement
"Authorities"	(1) at the Commencement Date and until such time as an Authority withdraws from this Agreement the authorities who are parties to this Agreement and (2) after the withdrawal of an Authority from this Agreement those authorities who remain parties to this Agreement and (3) from such time as another authority becomes party to this Agreement that authority and the other authorities who are parties to this Agreement
"BCPP"	and each an "Authority" Border to Coast Pensions Partnership Limited a company incorporated in England and Wales (registered number [●]) and wholly owned by the Authorities
"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 with 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

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	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 The Host Authority will propose a budget for the operation of the Joint Committee for approval by the Joint Committee.
- 7.3 The Authorities will together and equally indemnify the Host Authority in respect of any claims, liabilities and costs incurred by virtue of its role as Host authority when acting on behalf of the Authorities together.
- 7.4 In accordance with Schedule 2 the Joint Committee will designate an officer employed by one of the Authorities to be the Secretary to the Joint Committee.
- 7.5 The Officer Operations Group will provide support to the Joint Committee in accordance with the Group's Terms of Reference making arrangements and engaging on behalf of the Joint Committee with BCPP.

8. **COST SHARING**

- 8.1 Subject to clause 8.2 costs incurred in the operation of the Joint Committee (including the costs of officers providing support to the Joint Committee through the Officer Operations Group in accordance with this Agreement) will be borne by the Authority incurring them.
- 8.2 Costs incurred by the Host Authority in providing secretariat services to the Joint Committee and any other costs incurred by the Host Authority on behalf of the Joint Committee in its capacity as lead authority will be shared equally between the Authorities.

9. **TERMS OF REFERENCE**

- 9.1 The Joint Committee will meet from time to time (with support from the officers) to discuss and form a common view on the matters within the Terms of Reference.
- 9.2 The Joint Committee shall not make binding decisions on these issues but may make recommendations to each Authority to individually determine.

10. **VARIATION OF AGREEMENT**

- 10.1 Any of the Authorities may request a variation to this Agreement by making such a request in writing to the Secretary to the Joint Committee or his or her nominee.
- 10.2 The Secretary to the Joint Committee or his or her nominee shall circulate the request to each of the Authorities within 10 Business Days of receipt of the request for consideration and approval by the Authorities.
- 10.3 If the Authorities approve the variation then the Secretary to the Joint Committee or his or her nominee shall arrange for the preparation of an appropriate deed of variation to this Agreement to be prepared for execution by all Authorities and such change shall only take effect upon completion of that deed and the costs associated with the preparation of such deed of variation shall be shared equally between the Authorities.
- 10.4 If one of the Authorities does not approve the variation then the variation to this Agreement shall not occur.

11. **WITHDRAWAL FROM THIS AGREEMENT**

- 11.1 An Authority may withdraw from this Agreement in accordance with the following procedure:
- 11.1.1 Any Authority which wishes to withdraw from this Agreement shall give not less than twelve months written notice to expire on 31st March next following to the Secretary to the Joint Committee of its intention to do so. The Secretary to the Joint Committee or his or her nominee shall consult the Authorities upon which such notice has been served giving due consideration to:
- 11.1.1.1 any loss of funding arising from such withdrawal and including any non-payment, clawback or repayment of such funding; 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

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.

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SCHEDULE 2

Constitution of the Joint Committee

2. 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.
3. 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.
4. 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.
5. Each Authority may remove its appointed member and appoint a different member by giving written notice to the Secretary to the Joint Committee.
6. 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.
7. 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.
8. Each member of the Joint Committee shall comply with any relevant code of conduct of his or her Authority when acting as a member of the Joint Committee.

Proceedings

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.

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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.

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 transition 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).