
Dated:

2022

- (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) NORTH YORKSHIRE COUNTY COUNCIL
- (8) THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE
- (9) SOUTH YORKSHIRE PENSIONS AUTHORITY
- (10) SURREY COUNTY COUNCIL
- (11) WARWICKSHIRE COUNTY COUNCIL

**Amended and Restated 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 117 Botchergate, Carlisle, CA1 1RD;
- (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) **North Yorkshire County Council**, of County Hall, Northallerton, North Yorkshire, DL7 8AL;
- (8) **The Council of the Borough of South Tyneside**, of Town Hall and Civic Offices, Westoe Road, South Shields, Tyne and Wear, NE33 2RL;
- (9) **South Yorkshire Pensions Authority**, of Oakwell House, 2 Beevor Court, Pontefract Road, Barnsley, South Yorkshire, S71 1HG;
- (10) **Surrey County Council**, of Woodhatch Place, 11 Cockshot Hill, Woodhatch, Reigate, RH2 8EF; and
- (11) **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 ("**BCPP**") 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 BCPP and to regulate certain aspects of the affairs and their dealings with BCPP.
- (C) The Authorities, along with Northumberland County Council, entered into an agreement dated 6 June 2017 relating to arrangements between those parties in the pooling of Local Government Pension Scheme assets through BCPP (the "Original Agreement").
- (D) That part of the Local Government Pension Scheme previously administered by Northumberland County Council was merged into the Tyne and Wear Pension Fund with effect from 1 April 2020. Following the merger Northumberland County Council ceased to be an administering authority within the Local Government Pension Scheme and is no longer a shareholder in BCPP. All of its obligations under the Original Agreement were assumed by the Council of the Borough of South Tyneside with effect from 1 April 2020.
- (E) As BCPP has now been operating for several years, the Authorities believe it is appropriate to review and update the governance arrangements. The Host Authority has

proposed, under clause 10.1 of the Original Agreement, the amendments contained in this Agreement. The other Authorities have each approved the proposed amendments in accordance with clause 10.3 of the Original Agreement. The Authorities are therefore entering into this Agreement to amend and restate the Original Agreement.

- (F) The Authorities are local authorities within the meaning of the Local Government Act 1972 and have established and participated in a Joint Committee known as the Border to Coast Pensions Partnership Joint Committee which is responsible for the delivery of the Specified Functions.
- (G) 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, together with, where applicable, the general power of competence within section 1 of the Localism Act 2011 and the supporting provisions within section 111 Local Government Act 1972.
- (H) Neither the execution of this Agreement nor the carrying on of activities under it is intended by the Authorities to constitute the carrying on of any "regulated activity" under section 19 of the Financial Services and Markets Act 2000 ("FSMA"). In particular, the Joint Committee shall not constitute the establishment or operation of a "collective investment scheme" under s235 of FSMA.

OPERATIVE PROVISIONS

IT IS HEREBY AGREED AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

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 and each an "Authority"
"BCPP"	Border to Coast Pensions Partnership Limited a company incorporated in England and Wales (registered number 10795539) and wholly owned by the Authorities
"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 the UK GDPR (as defined in the DPA), 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 2018, 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
"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
"Original Agreement"	the Agreement dated 6 June 2017 between the Authorities and Northumberland County Council which related to the arrangements between those parties in the pooling of Local Government Pension Scheme investments
"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"	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 BCPP 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. AMENDMENT AND RESTATEMENT OF THE ORIGINAL AGREEMENT

- 2.1 The Original Agreement is hereby amended and restated on the terms of this Agreement with effect from the Commencement Date and is a continuation of the Original Agreement.
- 2.2 The Original Agreement shall remain in full force and effect for any issues arising which pre-date the Commencement Date and be interpreted on the terms of the Original Agreement. This Agreement does not release any party to it from any breaches of the Original Agreement existing at the date of this Agreement or affect any existing rights that have accrued under the Original Agreement prior to the date of this Agreement.

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. **CONTINUATION OF THE 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 agree that the Joint Committee established by the Original Agreement shall continue in accordance with the terms of this Agreement.

5.2 The purpose of the Joint Committee is to undertake the activities set out in the Terms of Reference in Schedule 1.

5.3 The Joint Committee shall operate and conduct its business in accordance with the terms of this Agreement including the Constitution in Schedule 2 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 related activity where a legal person is required to act.

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

7.3 The Host Authority 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 The Joint Committee will designate an officer employed by one of the Authorities to be the Secretary.

7.6 From the Commencement Date South Yorkshire Pensions Authority shall designate an officer as Secretary.

7.7 The Authorities will together and equally indemnify the Secretary and their Authority in respect of any claims, liabilities and costs incurred by virtue of its role as Secretary.

7.8 The Officer Operations Group will provide support to the Joint Committee in accordance with the Group's terms of reference as set out in Schedule 4 by 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.

10.2 The Secretary 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 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.

10.5 The Authorities may from time to time agree to vary this Agreement to enable any other administering authority to become a party to this Agreement, to be effected by the Authorities so that the other administering authority shall enter into a deed or variation on such terms as may be agreed, including but without prejudice to any cost sharing provisions which may apply to the existing Authorities.

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 of its intention to do so. The Secretary shall consult the other 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 whether due under this Agreement or otherwise; and

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

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

- 11.1.2 Following the expiry of the notice given in clause 11.1.1, the Authority shall cease to be a member of the Joint Committee but shall be subject to the rest of this clause 11.
- 11.2 Should an 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. For the avoidance of doubt, an Authority who ceases to be both a shareholder in BCPP and a member of the Joint Committee shall continue to have responsibility for complying with regulation 7(2)(d) of the LGPS Investment Regulations (pooling requirements) in accordance with its own constitution but without reference to the other parties to this Agreement or BCPP.
- 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.
- 11.5 This clause 11.5 applies if any of the Authorities is abolished or ceases to be an administering authority in circumstances where another local authority becomes the administering authority in place of the Authority.
- 11.5.1 Where this clause applies, the Authority affected and the remaining Authorities shall, subject to any contrary provision in any statutory order made in connection with the abolition or change in administering authority, make such arrangements as are necessary to enable the Authority affected to withdraw from this Agreement and, where relevant, to be replaced as a party to this Agreement by the replacement administering authority or authorities, provided that the replacement administering authority so consents.
- 11.5.2 Where this clause applies, and subject to any contrary provision in any statutory order made in connection with the abolition or change in administering authority, the remaining Authorities and the replacement administering authority or authorities shall enter into a deed of variation in accordance with the variation process set out in clause 10.5.
- 11.5.3 For the avoidance of doubt, where an affected Authority withdraws from this Agreement in the circumstances set out in this clause 11.5, such withdrawal shall be deemed not to be a withdrawal for the purposes of clauses 11.1.

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.
- 12.4 Following the termination of this Agreement the following provisions will continue in force to the extent relevant:

- 12.4.1 Clause 4 (Governing Principles) and Schedule 4 (Shared Objectives);
- 12.4.2 Clause 8 (Cost Sharing);
- 12.4.3 Clause 11 (Withdrawal from this Agreement);
- 12.4.4 Clauses 12 (Termination of this Agreement)
- 12.4.5 Clause 13 (Dispute Resolution);
- 12.4.6 Clause 14 (Notices);
- 12.4.7 Clause 15 (Information and Confidentiality);
- 12.4.8 Clause 16 (Data Protection);
- 12.4.9 Clause 17 (Freedom of Information),

together with any other provisions which expressly or impliedly continue to have effect after expiry or termination of this Agreement and all other rights and obligations will immediately cease, without prejudice to any rights, obligations, claims (including without limitation claims for damages for breach) and liabilities which have accrued prior to termination.

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 14.1.1**).

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: s151 Officer

Cumbria County Council

117 Botchergate, Carlisle, CA1 1RD

For the attention of: s151 Officer

Durham County Council

County Hall, Durham, DH1 5UE

For the attention of: s151 Officer

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: s151 Officer

Middlesbrough Borough Council

PO Box 340, Middlesbrough, TS1 2XP

For the attention of: s151 Officer

North Yorkshire County Council

County Hall, Northallerton, North Yorkshire, DL7 8AL

For the attention of: s151 Officer

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: s151 Officer

South Yorkshire Pensions Authority

Oakwell House, 2 Beavor Court, Pontefract Road, Barnsley, South Yorkshire, S71 1HG

For the attention of: s151 Officer

Surrey County Council

Woodhatch Place, 11 Cockshot Hill, Woodhatch, Reigate, RH2 8EF

For the attention of: s151 Officer

Warwickshire County Council

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

For the attention of: s151 Officer

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

14.2.1 if given as set out in clause **14.1.1**, at 9.00am on the 2nd Business Day after the date of posting; and

14.2.2 if given as set out in **clause 14.1.2**, 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.

14.3 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 14.2**.

14.4 To prove service of a notice or communication it will be sufficient to prove that the provisions of **clause 14** 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 15.2**, 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 separate Data Controllers of the Agreement Personal Data. As such, the Authorities shall at all times 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 under the Data Protection Legislation covering any Processing of Agreement Personal Data;

16.1.2 only undertake Processing of Agreement Personal Data that is 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 UK, 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 which is necessary for the use of core IT services and systems operated by the Authorities in connection with this Agreement;

- 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 (and no later than within one working day) if they become aware of any actual or suspected, threatened or 'near miss' incident of accidental or unlawful destruction, loss, alteration, unauthorised or accidental disclosure of or access to the Agreement Personal Data Processed, or if it is corrupted or rendered unusable, which is reasonably likely to result in risks to the rights and freedoms of natural persons;
 - 16.1.6 use their reasonable 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, transfer, delete or otherwise Process Personal Data; 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 Agreement Personal Data to any third parties other than in compliance with the Data Protection Legislation, for example other than:
- 16.2.1 as required in law in response to a data subject access request under the DPA;
 - 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 one or more of the other Authorities in relation to the Agreement Personal Data Processed pursuant to this Agreement, the Data Processor and the Data Controller(s) shall enter into an agreement which complies with the terms of the Data Protection Legislation. In particular, the Data Processor shall:
- 16.3.1 only Process that Agreement Personal Data on the written instructions of the Data Controller(s) unless required by law to act without such instructions;
 - 16.3.2 ensure that all persons authorised to process the Agreement Personal Data have committed themselves to confidentiality or are under an appropriate statutory duty of confidentiality;
 - 16.3.3 take appropriate measures to ensure the security of Agreement Personal Data;
 - 16.3.4 not engage a sub-processor except with the prior consent of the Data Controller(s) and subject to a written contract being put in place with the sub-processor;
 - 16.3.5 assist the Data Controller(s) in providing subject access and allowing data subjects to exercise their rights under relevant Data Protection Legislation;
 - 16.3.6 assist the Data Controller(s) in meeting its/their Data Protection Legislation obligations in relation to Agreement Personal Data as regards the security of processing, the notification of personal data breaches and data protection impact assessments;

- 16.3.7 in relation to the Agreement Personal Data, submit to audits and inspections, provide the Data Controller(s) with whatever information it/they need to ensure that they are complying with their obligations under the Data Protection Legislation in relation to the Processing and tell the Data Controller immediately if in its opinion an instruction infringes the Data Protection Legislation;
- 16.3.8 not transfer any Agreement Personal Data outside the UK to any jurisdiction that has not been determined as providing an adequate level of protection for Personal Data by the relevant Data Protection Authority or the UK Government, unless this is done with the express written agreement of the Data Controller(s) and it is necessary for the use of core IT services and systems operated by the Authorities, and is undertaken in compliance with Data Protection Legislation; and
- 16.3.9 on withdrawal from or termination of this Agreement, return all the Agreement Personal Data to the Data Controller(s) and securely delete and/or destroy any copies of the Agreement Personal Data which is Processed by the Data Processor pursuant to this Agreement, unless applicable laws permit retention of the Agreement Personal Data, in which case the relevant Authority(ies) agree(s) it (or they) shall retain the Agreement Personal Data securely and only for as long as strictly necessary in the capacity as a Data Controller.
- 16.4 Each Authority agrees to indemnify and keep indemnified and defend at its own expense the other Authorities against all costs, claims, damages and/or expenses (including legal and administrative) incurred by the other Authorities or for which the other Authorities may become liable due to any failure by that particular Authority, its employees or agents to comply with any of its obligations under this **clause 16**.
- 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 and, subject to **clause 17.6** 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 acknowledge 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 the Equality Act 2010 and agrees 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 third party.

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:

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:

Mayor / Authorised Signatory

Corporate Lead Legal and Governance / Authorised Signatory

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 operated by BCPP.
- 2 The Joint Committee will provide effective engagement with the Authorities as the investment vehicles are established and ultimately operated by BCPP. It will encourage best practice, operate on the basis that all partners have an equal say and promote transparency and accountability to each Authority.
- 3 The remit of the Joint Committee is:
 - 3.1.1 To provide support and guidance to the work being undertaken by the Officer Operations Group.
 - 3.1.2 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.
 - 3.1.3 To formulate processes and policies for appointment and termination of membership to the Joint Committee.
 - 3.1.4 To facilitate the adoption by the Authorities of relevant contracts and policies.
 - 3.1.5 To review and comment on requests for the creation of investment propositions and to make recommendations to BCPP as to the creation of additional investment propositions.
 - 3.1.6 To review and comment from time to time on the range of investment propositions offered and the winding up and transfer of investment propositions.
 - 3.1.7 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.
 - 3.1.8 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.
 - 3.1.9 To formulate and propose any common conflicts policy for adoption by the Authorities.
 - 3.1.10 To review and comment on each individual Authority's high level transition plans for the transfer of assets to the vehicles established and operated by BCPP in accordance with the Shared Objectives.
 - 3.1.11 To oversee performance of the vehicles established and operated by BCPP as a whole and individual investment propositions by receiving reports from BCPP and taking advice from the Officer Operations Group on those reports along with any external investment advice that it deems necessary.

3.1.12 To procure and employ, through an Authority, any professional advisor that the Joint Committee deems necessary to secure the proper performance of their duties.

SCHEDULE 2

CONSTITUTION OF THE JOINT COMMITTEE

- 1 The Joint Committee shall consist of one elected member appointed by each Authority. The member so appointed must at all times during the appointment, be a member of the committee or sub-committee of that Authority which discharges the functions of that Authority with respect to pensions.
- 2 Each Authority may appoint a named substitute. Any named substitute must meet the eligibility requirements in paragraph 1. The substitute may attend any meeting of the Joint Committee or any of its sub-committees in place of that authority's principal member if prior written notice that the substitute will attend is given to the Secretary 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.
- 5 Each appointed member shall be entitled to remain on the Joint Committee for so long as the Authority appointing him or her 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.

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 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 Business Days before a meeting, the Secretary 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 and Vice Chair 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. Subject to paragraph 5, the Chair shall hold that office until another member is appointed. The appointment of the Chair shall take place every two years, beginning with the Commencement Date with subsequent appointments falling not later than the first meeting of the Joint Committee following the start of the relevant municipal year. The Chair shall be permitted to serve for a maximum of two terms.

11.2 The Vice-Chair of the Joint Committee will be appointed from time to time by the members of the Joint Committee. Subject to paragraph 5, the Vice-Chair shall hold that office until another member is appointed. The appointment of the Vice-Chair shall take place every two years, beginning with the Commencement Date with subsequent appointments falling not later than the first meeting of the Joint Committee following the start of the relevant municipal year. The Vice-Chair shall be permitted to serve for a maximum of two terms.

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.

12 Quorum

The quorum of a meeting will be at least 60% of 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 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 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 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.

18 Urgent Business

18.1 In cases of urgency, the Host Authority, in consultation with the Chair and Vice Chair, may take decisions on behalf of the Joint Committee.

18.2 As far as reasonably practicable, the Host Authority shall communicate the intention to exercise the decision-making power under paragraph 18.1 to the other Authorities before the decision is made.

18.3 Any decisions taken under paragraph 18.1 will be reported at the next meeting of the Joint Committee together with an explanation of the need for urgency in the decision-making process.

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 through BCPP).
- 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 Authorities in an equitable manner.
- 4 Following the transitioning of assets to BCPP, the Authorities shall primarily but not exclusively invest their LGPS pension fund assets either through the collective investment vehicle(s) operated by BCPP, as the primary and exclusive collective investment vehicle(s) for all eligible fund assets, or by appointing BCPP to manage any non-eligible pension assets outside of such vehicle(s).