

Dated

2017

NORFOLK COUNTY COUNCIL

AND

[]

**MEMBERS ACCESS AGREEMENT RE TRANSITION
MANAGEMENT AND IMPLEMENTATION SERVICES**

THIS AGREEMENT is made the

day of

2017

BETWEEN

NORFOLK COUNTY COUNCIL of County Hall, Martineau Lane, Norwich, Norfolk, NR1 2DH ("Norfolk");

AND

[] ("Beneficiary");

NOW IT IS AGREED as follows:

1 BACKGROUND

- 1.1 Norfolk County Council is the procurement body for a range of single and multi-provider framework agreements for the provision of services to be known as the National LGPS Frameworks.
- 1.2 Further to this the Beneficiary has agreed to enter into this Members Access Agreement in order to regulate any liabilities that may arise as a result of the establishment and use of the Frameworks.

2 DEFINITIONS AND INTERPRETATION

- 2.1 The following definitions shall have the following meanings:

"Agreement" means this Members Access Agreement;

"Call-off Contract" means any call-off contract entered into pursuant to the terms of the Frameworks;

"Chief Executive" means the head of paid service at a Council;

"Commencement Date" means the date of this Agreement;

"Direct Losses" means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses save where such Indirect Losses form part of the liability, action, proceedings and/or demand asserted against an Authority;

"Expiry Date" means the later of the date on which all liabilities under the Frameworks and any Call-off Contract cease;

"Indirect Losses" means loss of profits, loss of use, loss of production, loss of business or loss of business opportunity or any indirect loss of any nature;

"Instructing Council" means in relation to the relevant Call-off Contract the Party that has ordered services by entering into that Call-off Contract pursuant to the Frameworks;

"Parties" means the parties to this Agreement;

"Potential Liabilities" means any Direct Loss and/or Indirect Loss suffered or incurred by a Party arising out of or in connection with any or all of the following:

- (a) any delay in the procurement of the Frameworks;
- (b) any finding that the Frameworks have not been procured in compliance with the Public Contracts Regulations 2015; and
- (c) any claim brought by a contractor against that Party under the Frameworks and/or any Call-off Contract;

"Framework" means the framework agreements entered into by the Norfolk County Council and the providers for the purposes of procuring services in relation to the administration of pension schemes, as listed from time to time on <http://www.nationalgpsframeworks.org>;

"Officers" means the Parties' officers tasked with working on the Frameworks;

"OJEU Notice" means the contract notice placed in the Official Journal of the European Union advertising the relevant Framework; and

"Working Day" means any day other than a Saturday, Sunday or public holiday in England and Wales.

2.2 The interpretation and construction of this Agreement shall all be subject to the following provisions:-

2.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

2.2.2 words importing the masculine include the feminine and the neuter;

2.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

2.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

2.2.5 the expression "this Agreement" shall include any document or the terms of any document which are incorporated by reference into this Agreement;

- 2.2.6 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 2.2.7 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- 2.2.8 references in this Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Agreement so numbered;
- 2.2.9 references in this Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Agreement so numbered;
- 2.2.10 reference to a Clause is a reference to the whole of that clause unless stated otherwise;
- 2.2.11 and in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules.

3 TERM

- 3.1 This Agreement shall come into force on the Commencement Date and shall continue in force until the Expiry Date.

4 STATUS OF THE AGREEMENT

- 4.1 The Parties agree that this Agreement shall take the form of a legally binding relationship and all obligations and liabilities between them created by this Agreement shall from the Commencement Date be construed accordingly.

5 GENERAL PRINCIPLES

- 5.1 Each Party represents to the other Party to this Agreement that it has obtained all necessary consents to enter into this Agreement for the purposes of the Frameworks.

6 LIABILITIES AND INDEMNITIES

- 6.1 Subject to this clause 6, each Party agrees that as from the Commencement Date it shall bear any Potential Liabilities that it may suffer and/or incur.
- 6.2 The Beneficiary acknowledges and agrees to fully indemnify Norfolk against all actions, claims, costs, expenses and damages brought against or suffered by Norfolk arising out of this Agreement except where such actions, claims, costs,

expenses and damages are brought against or suffered by Norfolk due to the negligence of Norfolk.

6.3 The Beneficiary agrees and acknowledges that where Norfolk is found liable for any actions, claims, costs, expenses and damages brought against or suffered by it that arise in part due to negligence, default, fraud, or breach of contract by the Beneficiary then the Beneficiary shall fully indemnify Norfolk in respect of that part of the actions, claims, costs, expenses and damages for which it caused or is responsible for.

6.4 For the avoidance of doubt the Beneficiary's liability under this Agreement's clauses 6.2 and 6.3 shall be limited to liabilities arising pursuant to:

6.4.1 the Framework relating to Lot [] of the Transition Management and Implementation Services; and

6.4.2 any additional Frameworks accessed by the Beneficiary pursuant to clause 7.2.

7 USE OF THE FRAMEWORKS AND FEES

7.1 The Beneficiary shall pay a one-off contribution of £ [] (XXXX) by making a payment to Norfolk's bank account within 30 Working Days of the Commencement Date.

7.2 Where the Beneficiary wishes during the term of this Agreement to access additional Frameworks (in whole or in part (lots)) provided by Norfolk it shall:

7.2.1 Give written notice to Norfolk in the form attached to Annex A;

7.2.2 Pay the relevant additional fee as published from time to time on <http://www.nationalgpsframeworks.org>; and

7.2.3 Observe, perform and be bound by the terms and conditions of this Agreement in relation to the additional Framework with effect from the date of receipt of its notice to Norfolk in accordance with Clause 17.

8 INSURANCE

8.1 Each Party shall obtain and maintain throughout the term of this Agreement insurance sufficient to cover all of its obligations under this Agreement.

8.2 Each Party shall indemnify the other Party against loss sustained as a result of breach of this Clause 8.

9 CONFIDENTIAL INFORMATION

9.1 Subject to Clauses 10 and 11, each Party shall at all times use their reasonable endeavours to keep confidential (and to procure that their respective employees agents consultants and sub-contractors shall keep confidential) all Confidential Information concerning the Frameworks or the business and affairs of each Party which may now or at any time hereafter be in its possession and shall not disclose it except with the consent of the other Party, such consent not to be unreasonably withheld.

- 9.2 For the purpose of this Agreement, “Confidential Information” means any information imparted to any Party or their employees agents consultants or sub-contractors (the "Receiving Party") which was imparted to the Receiving Party on the basis that it is to be kept confidential or would by its nature normally be regarded as being confidential or which to the knowledge of the Receiving Party was obtained by the other Party on the basis that it was to be kept confidential or is of commercial value in relation to the Frameworks but shall not include any information which is for the time being in the public domain otherwise than by reason of its wrongful disclosure by the Receiving Party.
- 9.3 This Clause 9 shall continue without limit of time and shall survive the termination of this Agreement.
- 9.4 This Clause 9 shall not prevent the disclosure of any Confidential Information relating to the Frameworks which is reasonably disclosed for the furtherance of the Frameworks or the promotion of the Frameworks provided that the relevant Party or person disclosing the information takes all steps that are commercially practicable to preserve the confidentiality of the information and shall not prevent the disclosure of any Confidential Information where required by law.

10 COMPLIANCE WITH LAWS

- 10.1 The Parties shall at all times comply with all laws including but not limited to the Data Protection Act 1998 and will, where appropriate maintain a valid and up to date registration or notification under such Laws.
- 10.2 Each Party shall indemnify and keep indemnified the other Party against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by the other Party in respect of any breach of this Clause 10 by a Party and/or any act or omission of any sub-contractor.

11 FREEDOM OF INFORMATION

- 11.1 Each Party acknowledges that the other Party is subject to the requirements of the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002 (as appropriate) and the Environmental Information Regulations 2004 and each Party shall where reasonable assist and co-operate with the other Party (at their own expense) to enable the other Party to comply with these information disclosure obligations.
- 11.2 Where a Party receives a request for information under either the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002 (as appropriate) (“FOIA”) or the Environmental Information Regulations 2004 (“EIR”) in relation to information which it is holding on behalf of the other Party in relation to the Frameworks, it shall:
- 11.2.1 transfer the request for information to the other Party as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
- 11.2.2 provide the other Party with a copy of all information in its possession or power in the form that the Party requires within 10 Working Days

(or such longer period as the Party may specify) of the Party requesting that information; and

- 11.2.3 provide all necessary assistance as reasonably requested by the other Party to enable that Party to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

12 DISPUTE RESOLUTION PROCEDURE

- 12.1 A Party wishing to invoke the dispute resolution process shall send a written notice to the other Party specifying the nature of the dispute and its proposals for resolving the same.
- 12.2 A senior Officer representing each of the Parties shall meet within 14 days of receipt of a notice to attempt to resolve the dispute.
- 12.3 Should the action in Clause 12.2 fail to resolve the dispute, the Chief Executives of the Parties shall meet within 14 days of the meeting referred to in Clause 12.2 and attempt to resolve the dispute.
- 12.4 Should the dispute remain unresolved the matter will be referred to Clause 19.2 for determination.

13 WITHDRAWAL AND CONSEQUENCES

- 13.1 Where any Party withdraws from this Agreement:
 - 13.1.1 the rights and obligations of that Party in respect of the Frameworks shall cease on such withdrawal;
 - 13.1.2 the Agreement shall continue in full force in respect of any liabilities which arise out of this Agreement up to the Expiry Date;
 - 13.1.3 the withdrawing Party shall become immediately liable to pay any sums due from it to another Party under this Agreement; and
 - 13.1.4 the disputes procedure set out in Clause 12 shall remain in force in respect of any of the matters arising from the performance of or withdrawal of a Party under this Agreement.
- 13.2 A Party wishing to withdraw from this Agreement shall give written notice to the other Party, and the date of withdrawal of that Party shall be the date one month from the date of the receipt of the notice by the other Party.

14 VARIATION

- 14.1 This Agreement may only be varied or modified by a supplemental agreement which is made in writing by the Parties.

15 ENTIRE AGREEMENT

- 15.1 This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Agreement.

16 **WAIVER**

- 16.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.
- 16.2 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.
- 16.3 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a Party from subsequently requiring compliance with the waived obligation.

17 **NOTICE**

- 17.1 Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be:
- 17.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 17.1.2 sent by fax to its main fax number OR sent by email
- 17.2 Any notice shall be deemed to have been received:
- 17.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - 17.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
 - 17.2.3 if sent by fax OR email, at 9.00 am on the next Working Day after transmission.
- 17.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18 **GENERAL**

- 18.1 Nothing contained or implied herein shall prejudice or affect the Parties' rights and powers duties and obligations in the exercise of their functions as Local Authorities and/or in any other capacity and all rights powers discretions duties and obligations of the Parties under all Laws may at all times be fully and effectually exercised as if

the Parties were not party to this Agreement and as if this Agreement had not been made.

- 18.2 The Parties shall only represent themselves as being an agent, partner or employee of any other Party to the extent specified by this Agreement and shall not hold themselves out as such nor as having any power or authority to incur any obligation of any nature express or implied on behalf of any other Party except to the extent specified in this Agreement.
- 18.3 This Agreement is personal to the Parties and no Party shall assign transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under this Agreement.
- 18.4 No person other than the Parties shall be entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 18.5 The Parties shall at all times deal with one another and their respective rights and responsibilities under this Agreement in good faith including in respect of any disputes between them.
- 18.6 If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.
- 18.7 The Parties commit to share data and knowledge relevant to the Frameworks where appropriate and in accordance with their duties under the Data Protection Act 1998.
- 18.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart, when executed, shall be an original of this Agreement and all counterparts shall together constitute one instrument.

19 **LAW AND JURISDICTION**

- 19.1 This Agreement shall be considered as a contract made in England and Wales and shall be subject to the laws of England and Wales and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 19.2 Subject to the provisions of the Dispute Resolution Procedure, the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement (including non-contractual disputes or claims) and irrevocably submit to the jurisdiction of those courts.

IN WITNESS WHEREOF this Agreement has been executed as a deed by the parties on the date of this Agreement.

THE COMMON SEAL OF)
NORFOLK COUNTY COUNCIL)
was affixed hereto)
in the presence of)

THE COMMON SEAL OF)
[])
was affixed hereto)
in the presence of:-)

