

THIS AGREEMENT is made the _____ day of _____ 2013

BETWEEN

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

[_____] of [_____] (“NAME OF COUNCIL”)

(together “the Councils”)

NOW IT IS AGREED as follows:

1 BACKGROUND

- 1.1 Norfolk County Council as letting authority on behalf of [_____] “the Beneficiary Councils” (being LGPS administering authorities) is procuring a multi-provider framework agreement for the provision of Global Custody Services to be known as the National LGPS Framework for Global Custody Services (“the Framework”).
- 1.2 Further to this the Councils have 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 Framework.
- 1.3 Where any other public body within the scope of the OJEU Notice wishes to call off services pursuant to the Framework then that public body will enter into a Deed of Adherence so that it shall be deemed to become a Party to this Agreement and be bound by its terms as if it had been a Party from the Commencement Date.

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 Framework;

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

"Commencement Date" means the date of the Framework Agreement;

"Deed of Adherence" means the deed of adherence attached at Schedule 1;

"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 Framework 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 Framework;

"Parties" means the Beneficiary Councils and any public body within the scope of the OJEU Notice that has from time to time entered into a Deed of Adherence;

"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 Framework;
- (b) any finding that the framework has not been procured in compliance with the Public Contracts Regulations 2006;
- (c) pursuant to EU Directive 2007/66/EC (brought into force under the Public Contracts (Amendments) Regulations 2009 (SI 2009/2992)), any declaration that the award of the Framework is ineffective; and
- (d) any claim brought by a contractor against that Party under the Framework and/or any Call-off Contract;

"Framework" means the framework agreement dated [] day of [] 20[] entered into by the Norfolk County Council for the purposes of procuring global custody services in relation to their functions as administering authorities for local government pension scheme pension funds;

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

"OJEU Notice " means the contract notice placed in the Official Journal of the European Union dated 19th June 2013 reference 2013/S 119-203544 advertising the 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 Framework 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 Councils that it has obtained all necessary consents to enter into this Agreement for the purposes of the Framework.

6 LIABILITIES AND INDEMNITIES

- 6.1 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 Parties to this Agreement agree that if at any time they are an Instructing Council then they shall indemnify and hold harmless all the other Councils in respect of any Direct Losses and/or Indirect Losses that each of the Councils (or any of them) may suffer and/or incur arising out of or in connection with the Call-off Contract which has been placed by such Instructing Council as a result of such Instructing Council's acts or omissions under such Call-off Contract.
- 6.3 The Parties agree to share the reasonable costs of Norfolk arising from its role as letting authority pursuant to clause 1.1 including for the avoidance of doubt any Potential Liabilities that Norfolk may suffer or incur as letting authority and the Parties accordingly agree on this basis to indemnify and hold harmless Norfolk against all such Potential Liabilities arising out of or in connection with any claim against Norfolk as letting authority in relation to the Framework.

7 USE OF THE FRAMEWORK

- 7.1 Where a public body within the scope of the OJEU Notice not being a Beneficiary Council wishes to order services pursuant to the Framework then prior to taking any actions under the Framework (including entering into preliminary discussions of any kind with any of the providers engaged on the Framework) it shall be required to enter a Deed of Adherence to be bound by the terms of this Agreement.

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 Norfolk and the other Parties against loss sustained as a result of breach of this Clause.

9 CONFIDENTIAL INFORMATION

- 9.1 Subject to Clauses 10 and 11, the Parties 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 Framework or the business and affairs of the other Parties which may now or at any time hereafter be in its possession and shall not disclose it except with the consent of the other Parties, 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 Parties on the basis that it was to be kept confidential or is of commercial value in relation to the Framework 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 Framework which is reasonably disclosed for the furtherance of the Framework or the promotion of the Framework 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 Parties against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by the other Parties 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 Parties are 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 or the Environmental Information (Scotland) Regulations 2004 (as appropriate) and each Party shall where reasonable assist and co-operate with the other Parties (at their own expense) to enable the other Parties 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 or the Environmental Information (Scotland) Regulations 2004 (as appropriate) ("EIR") in relation to information which it is holding on behalf of any of the other Parties in relation to r the Framework, it shall:
 - 11.2.1 transfer the request for information to the relevant 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 relevant 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 Parties 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 18.2 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 Framework 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 each of the other Parties, 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 Parties.

14 VARIATION

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

15 ENTIRE AGREEMENT

- 15.1 This Agreement constitutes the entire agreement and understanding of the Parties and Norfolk and supersedes any previous agreement between the Parties and Norfolk 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 **GENERAL**

- 17.1 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.
- 17.2 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
- 17.3 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.
- 17.4 No person other than the Parties shall be entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 17.5 Any notice required or permitted to be given by a Party to any other Party under this Agreement shall be in writing and addressed to the Chief Executive of the other Party at its principal office. Service by email is not acceptable.
- 17.6 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.
- 17.7 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.
- 17.8 The Parties commit to share data and knowledge relevant to the Framework where appropriate and in accordance with their duties under the Data Protection Act 1998.

17.9 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.

18 LAW AND JURISDICTION

18.1 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.

18.2 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.

SAMPLE

5. VARIATION OF THE ACCESS AGREEMENT

All other terms of the Access Agreement shall be unamended.

6. GOVERNING LAW AND JURISDICTION

6.1 This deed and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

6.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement, its subject matter or formation (including non-contractual disputes or claims).

7. COUNTERPARTS

This deed 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 deed and all counterparts shall together constitute one instrument.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 Existing Parties

[]

Norfolk County Council

SAMPLE

THE COMMON SEAL OF NORFOLK COUNTY COUNCIL)
was hereunto affixed)
the presence of:-)

THE COMMON SEAL OF **[New Party]**)
was hereunto affixed)
the presence of:-)

SAMPLE

The Common Seal of)
NORFOLK COUNTY COUNCIL)
was affixed hereto in the presence of)

The Common Seal of)
[] COUNCIL)
was affixed hereto in the presence of)

SAMPLE