

**DATED**

**2020**

---

(1) NORTH YORKSHIRE COUNTY COUNCIL

(2) CITY OF YORK COUNCIL

---

**(NEW) COLLABORATION AGREEMENT**

---

Relating to: **Provision of health and safety services and functions**  
**to City of York Council**

## CONTENTS

|     |   |    |
|-----|---|----|
| 1.  | <b>Definitions and Interpretation</b> ..... | 3  |
| 2.  | <b>Commencement and Duration</b> .....      | 8  |
| 3.  | <b>Representatives</b> .....                | 9  |
| 4.  | <b>CYC Obligations</b> .....                | 9  |
| 5.  | <b>NYCC Obligations</b> .....               | 9  |
| 6.  | <b>Mutual Obligations</b> .....             | 9  |
| 7.  | <b>Intellectual Property</b> .....          | 16 |
| 8.  | <b>Insurance</b> .....                      | 16 |
| 9.  | <b>Limitation of Liability</b> .....        | 16 |
| 10. | <b>Termination</b> .....                    | 18 |
| 11. | <b>Consequences of Termination</b> .....    | 18 |
| 12. | <b>Dispute Resolution</b> .....             | 18 |
| 13. | <b>Changes</b> .....                        | 20 |
| 14. | <b>Publicity</b> .....                      | 20 |
| 15. | <b>TUPE</b> .....                           | 20 |
| 16. | <b>Assignment and Sub Contracting</b> ..... | 20 |
| 17. | <b>Rights of Third Parties</b> .....        | 20 |
| 18. | <b>Notices</b> .....                        | 21 |
| 19. | <b>Waiver</b> .....                         | 21 |
| 20. | <b>No Agency</b> .....                      | 21 |
| 21. | <b>Further Assurance</b> .....              | 22 |
| 22. | <b>Severance</b> .....                      | 22 |
| 23. | <b>Entire Agreement</b> .....               | 22 |
| 24. | <b>Counterparts</b> .....                   | 22 |
| 25. | <b>Governing Law and Jurisdiction</b> ..... | 23 |

|                   |                                    |
|-------------------|------------------------------------|
| <b>SCHEDULE 1</b> | <b>SERVICES</b>                    |
| <b>SCHEDULE 2</b> | <b>PRINCIPLES OF COLLABORATION</b> |
| <b>SCHEDULE 3</b> | <b>COSTS AND SHARING</b>           |
| <b>SCHEDULE 4</b> | <b>TUPE AND STAFF MANAGEMENT</b>   |
| <b>SCHEDULE 5</b> | <b>DATA PROCESSING</b>             |

**PARTIES**

- (1) **NORTH YORKSHIRE COUNTY COUNCIL** of County Hall, Racecourse Lane, Northallerton, North Yorkshire, DL7 8AD ("**NYCC**");
- (2) **CITY OF YORK COUNCIL** of West Offices, Station Rise, York, YO1 6GA ("**CYC**").

**BACKGROUND**

- (A) Each Party is a Contracting Authority for the purposes of the Public Contracts Regulations 2015 (the "**Regulations**").
- (B) This Agreement describes how the Parties will collaborate in accordance (as applicable) with the Local Authorities (Goods and Services) Act 1970, s1 of the Localism Act 2011, s93 of the Local Government Act 2003 and s101 and s111 of the Local Government Act 1972;
- (C) The Parties aim to benefit from the economies of scale that will be generated through this collaboration which will contribute to the promotion and improvement of the respective areas;
- (D) This Agreement, amongst other things, sets out and is predicated on the Principles of Collaboration as contemplated by regulation 12(7) of the Regulations which the Parties have agreed should apply to the arrangements in this Agreement;
- (E) The rationale for entering into this Agreement is for the Parties to be able to work collaboratively in the public and common interest and in accordance with the Principles of Collaboration in order to utilise the operational expertise and experience of employees of both Parties in the delivery of joint health and safety related services; and
- (F) The arrangements contemplated by this Agreement are predicated on the fact that the public procurement rules as set out in the Regulations and the Directive are not designed to interfere with the freedom of public authorities to perform the public service tasks conferred on them by using their own resources which includes the possibility of cooperation with other public authorities.

## 1. Definitions and Interpretation

In this Agreement the following terms shall have the following meanings:

|                                   |   |
|-----------------------------------|---|
| <b>ADR</b>                        | has the meaning given to it in clause 12.5;   |
| <b>Audit Act</b>                  | means the Local Audit and Accountability Act 2014;  |
| <b>Authorised Representatives</b> | means the persons referred to in clause 3.1;  |
| <b>Agreement</b>                  | means this agreement together with the Schedules attached to it;  |
| <b>Client Group</b>               | has the meaning given in paragraph 2 of Schedule 1 to this Agreement;   |
| <b>Change</b>                     | means an alteration to the Services and/or a variation to the terms of this Agreement;  |
| <b>Commencement Date</b>          | means 1 <sup>st</sup> April 2020;   |
| <b>Contracting Authority</b>      | has the meaning given to it in Part 1 of the Regulations;   |
| <b>Costs</b>                      | means the costs to be paid by each Party to the other in respect of the arrangements set out in this Agreement (in accordance with s93 Local Government Act 2003) as set out in Schedule 3 to this Agreement; |
| <b>Data Controller</b>            | has the meaning set out in the Data Protection Act 2018;  |

|   |  |
|---|--|
| <b>Data Processor</b>                   | has the meaning set out in the Data Protection Act 2018;   |
| <b>Data Protection Legislation</b>      | means the Data Protection Act 2018 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department from time to time in relation to the same (including but not limited to the General Data Protection Regulation (EU) 2016/679); |
| <b>DPA Principles</b>                   | means those principles set out in the Data Protection Legislation  |
| <b>Directive</b>                        | means Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC;   |
| <b>Dispute</b>                          | has the meaning given to it in clause 12.1;  |
| <b>EIR</b>                              | means the Environmental Information Regulations 2014;  |
| <b>Equipment</b>                        | any equipment, including tools or facilities, provided by either Party and/or either of their third party subcontractors used directly or indirectly in the provision of the Services;   |
| <b>European Union Treaty Principles</b> | means the principles deriving from the Treaty on the Functioning of the  |

European Union in respect of public procurement of:

- (a) transparency;
- (b) proportionality;
- (c) equal treatment and non-discrimination; and
- (d) mutual recognition;

**Event Of Default**

means any act or omission on the part of any Party or its Staff in respect of:

- (a) any breach of its obligations under this Agreement; and
- (b) any representation, statement or tortious act or omission, including negligence, arising under or in connection with this Agreement;

**FOIA**

means the Freedom of Information Act 2000;

**Intellectual Property**

means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached to such rights;

**Law**

means:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;

in each case in force in the United Kingdom;

**Personal Data**

means all data that falls within the definition of "data" in the Data Legislation;

**Parties**

means the parties to this Agreement and the term "Party" shall be construed accordingly;

**Principles of Collaboration**

means the principles set out in Schedule 2 to this Agreement;

**Regulations**

means the Public Contracts Regulations 2015;

**Relevant Transfer**

means a relevant transfer of an undertaking for the purposes of TUPE;



|   |  |
|---|--|
| <b>Requesting Party</b>                 | has the meaning given to it in clause 6.11.2;  |
| <b>Shared Head of Health and Safety</b> | means the joint Head of Health and Safety for NYCC and CYC;  |
| <b>Shared Health and Safety Team</b>    | means the merged team of health and safety staff (now employed by NYCC) which provide the Services to NYCC and CYC   |
| <b>Services</b>                         | means the range of services which shall be provided (all or in part) by the Shared Health and Safety Team to CYC under this Agreement and which are more specifically set out Schedule 1 to this Agreement but for the sake of clarification excludes any Traded Services carried out by NYCC; |
| <b>Staff</b>                            | means partners, directors, employees, agents and subcontractors of either Party in connection with the Agreement;  |
| <b>Term</b>                             | means the period from the Commencement Date to expiry of this Agreement in accordance with clause 10;  |
| <b>Traded Services</b>                  | any Health and Safety advice and guidance provided by NYCC to third party organisations other than CYC   |
| <b>TUPE</b>                             | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or any other regulations enacted for the purpose of   |

implementing the EC Acquired Rights Directive (Council Directive 2001/23/EC) into English law;

**Working Day(s)**

means any day between Monday to Thursday 0900 to 1700, Friday, 0900 to 1630, excluding public holidays; and

1.1 References to:

1.1.1 any Act, Order, Regulation, Statutory Instrument shall be construed as a reference to the Act, Order, Regulation or Statutory Instrument as amended, replaced, consolidated or re-enacted;

1.1.2 one gender include any other gender;

1.1.3 persons include corporations;

1.1.4 singular includes the plural;

1.1.5 clauses are to clauses to this Agreement; and

1.1.6 paragraphs are paragraphs of the Schedules to this Agreement.

1.2 The Schedules to this Agreement, together with the documents referred to in them, form part of this Agreement.

1.3 In the event of any conflict or inconsistency between this Agreement and any conditions detailed in the Schedules the following order of precedence shall apply:

1.3.1 this Agreement; and

1.3.2 the Schedules.

**2. Commencement and Duration**

This Agreement shall commence on the Commencement Date and continue unless and until terminated:

(a) as provided by the terms of this Agreement; or

(b) by either party giving to the other not less than twelve (12) months' prior written notice in accordance with clause 10.

### **3. Representatives**

3.1 Each Party shall appoint a representative who shall have full authority to act on the applicable Party's behalf for the purposes of this Agreement ("**Authorised Representative**"). In the event there is a change to a Party's Authorised Representative, such Party shall inform all Parties of the identity of its new Authorised Representative no later than ten (10) Working Days after it made such change.

3.2 All Parties shall be entitled to treat any act of an Authorised Representative in connection with this Agreement as being expressly authorised by the relevant Party.

### **4. NYCC Obligations**

NYCC shall through the Shared Health and Safety Team provide the Services with all reasonable skill and care and in accordance with the Schedules and the terms of this Agreement and shall comply with its obligations set out in this Agreement and its Schedules.

### **5. CYC Obligations**

CYC shall comply with its obligations set out in this Agreement and its Schedules.

### **6. Mutual Obligations**

#### **6.1 Principles of Collaboration**

The Parties agree that, to the extent which it is reasonably practicable, this Agreement shall operate on a collaborative basis and to this end each Party agrees to use all reasonable endeavours to adhere to the Principles of Collaboration.

#### **6.2 Payment**

6.2.1 Each Party shall pay the Costs in accordance with Schedule 3 of this Agreement.

6.2.2 CYC shall be liable to pay such value added tax as may be properly chargeable in respect of the delivery of the Services to it.

6.2.3 Invoices for the Costs shall be as described in Schedule 3 of this Agreement and CYC shall pay all undisputed elements of an invoice within thirty (30) days of receipt.

### 6.3 **Assets and Accommodation**

Any Equipment belonging to either Party on the Commencement Date or at any time during the Term shall remain vested in the owning Party. Each Party shall be responsible for the safety and security of such Equipment whilst such Equipment is on its premises and may not add to, modify or in any way interfere with such Equipment nor allow anyone else (other than someone authorised in writing by the other Party to do so.

6.3.1 The Parties shall not be liable to each other for any loss of or damage to any Equipment which is due to fair wear and tear and/or is caused by the other Party or any person acting on its or their behalf (as applicable).

### 6.4 **Access**

6.4.1 Each Party shall provide such access to the other to its premises or facilities as shall be required for the delivery of the Services.

6.4.2 Where a Party is responsible for any preparatory work in respect of the delivery of the Services, including the provision of items required by the other Party each Party shall ensure that all such activities are completed and items made available in sufficient time to allow the other Party to fulfil and complete their obligations in accordance with the Services.

### 6.5 **Operational matters**

Each Party acknowledges and agrees that, provided the applicable Party's Authorised Representative gives as much notice as possible to the other Party's Authorised Representative (and, whenever practicable, agrees the timescales with the Party's Authorised Representative) that Party may:

6.5.1 suspend the provision of the Services for operational reasons or due to an emergency; or

6.5.2 give the Party instructions concerning the Services which it reasonably believes are necessary for health and safety reasons or the quality of the Services provided to the applicable Party or any other person.

## 6.6 **Review Meetings**

6.6.1 The Authorised Representatives from each Party shall attend regular review meetings to:

6.6.1.1 review and discuss the operation of this Agreement;

6.6.1.2 share any lessons learned; and

6.6.1.3 consider any other matters reasonably required by any Party.

6.6.2 If any Party reasonably considers that a circumstance constitutes an emergency or otherwise requires immediate resolution, that Party may by notice to the other Party require that a review meeting be held as soon as practicable and in any event within five (5) Working Days following such notice.

## 6.7 **Best Value and Continuous Improvement**

Each Party which is subject to the best value duty imposed on local authorities by s3 of the Local Government Act 1999 shall each be responsible for ensuring compliance with such duty.

## 6.8 **Health and Safety**

6.8.1 Each Party shall comply with the requirements of the Law and in particular the Health and Safety at Work Act 1974 and the Management of Health and Safety Regulations 1999 insofar as they apply to the provision of the Services.

6.8.2 Each Party shall have in place a health and safety policy which complies with all statutory requirements.

## 6.9 **Data Protection**

6.9.1 Each Party shall comply with the DPA Principles and shall observe any other obligation under the Data Protection Legislation which arises in connection with this Agreement.

- 6.9.2 Each Party shall (and each shall procure that any of its Staff involved in the provision of the Services shall) comply with any notification requirements under the Data Protection Legislation.
- 6.9.3 Notwithstanding the general obligation in clauses 6.9.1 and 6.9.2 (above), where either Party (as applicable) is processing Personal Data as a Data Processor for another Party, the processing Party (as applicable) shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required by the DPA Principles; and
- 6.9.3.1 provide the Party with such information as the other Party may reasonably require to satisfy itself that the Party is complying with its obligations under the Data Protection Legislation;
- 6.9.3.2 promptly notify such Party of any breach of the security measures required to be put in place pursuant to this clause 6.9; and
- 6.9.3.3 ensure it does not knowingly or negligently do or omit to do anything which places a Party in breach of the other Party's obligations under the Data Protection Legislation.
- 6.9.4 Each Party shall ensure that Personal Data shall:
- 6.9.4.1 be processed fairly and lawfully in accordance with the requirements of DPA Principles;
- 6.9.4.2 be processed only for the purpose of the provision of the Services and shall not be processed for any other purpose without the applicable Party's approval;
- 6.9.4.3 be adequate, relevant and not excessive in relation to the purpose specified;
- 6.9.4.4 be accurate and, where necessary, kept up to date;

- 6.9.4.5 be secured to prevent unauthorised or unlawful processing and to protect against loss, destruction or damage;
  - 6.9.4.6 be held for only as long as necessary to meet the purpose;
  - 6.9.4.7 not be transferred to any country outside the European Economic Area without the applicable Party's approval; and
  - 6.9.4.8 be processed in accordance with the rights afforded to individuals under the Data Protection Legislation.
  - 6.9.4.9 be processed in accordance with Schedule 5
- 6.9.5 If either Party receives any subject request for Personal Data such request shall be referred to the relevant Party's data protection officer as soon as practicable after receipt.
- 6.9.6 The provisions of clause 6.9 shall apply during the Term and indefinitely after the expiry or termination of this Agreement.
- 6.9.7 Both Parties whether acting as a Data Processor or a Data Controller as defined in the Data Protection Act 2018 shall indemnify and keep indemnified each other in full from and against all claims, proceedings, actions, damages, costs, fines, expenses and any other liabilities which may arise out of, or in consequence of, the breach or purported breach of the Data Protection Act or the performance or non-performance by the either Party of its obligations under the Agreement, including loss of or damage to property, financial loss arising from any breach of the Data Protection Act 2018, or any other loss which is caused directly or indirectly by any act or omission of the either Party. Neither Party shall be responsible for any loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the other or by breach by the other of its obligations under the Agreement.

## 6.10 **Compliance with Law**

- 6.10.1 Each Party shall comply with all applicable Law and all other relevant regulations, codes of practice, guidance and other requirements of any relevant government or governmental agency relating to the Services including (but without limitation) the Human Rights Act 1998.

6.10.2 Without prejudice to clauses 6.7 to 6.9 (inclusive), where new Law is enacted during the Term which has the effect of changing the manner in which the Services (or any part of them) is to be provided, the Parties shall ensure that:

6.10.2.1 each Authorised Representative is informed of the nature and effect of such Law and the changes necessitated by it to the Services; and

6.10.2.2 the Services are provided in accordance with such changes in Law.

## 6.11 **Freedom of Information etc.**

6.11.1 Each Party acknowledges that the other Parties are subject to the requirements of the FOIA, the EIR and the Audit Act. Each Party shall assist and cooperate with each other (at its own expense) to enable all Parties to comply with any applicable information disclosure requirements.

6.11.2 Each Party shall make all reasonable efforts to assist all other Parties in meeting their respective obligations under the FOIA, EIR and Audit Act in respect of this Agreement. If a Party (the "**Requesting Party**") receives an access request under the FOIA, EIR and/or the Audit Act each other Party shall, upon written request, provide:

6.11.2.1 to the Requesting Party a copy of the information requested which is held by the other Parties on behalf of the Requesting Party within a period of five (5) Working Days; and

6.11.2.2 access to the relevant Authorised Representative, within a period of five (5) Working Days, to inspect information held by such Party on behalf of the Requesting Party.

6.11.3 Where a Requesting Party is asked to release information which any other Party believes to be exempt information under an exemption in the FOIA or EIR or Audit Act (as applicable), it shall state in writing to the Requesting Party the nature of the information and the relevant exemption. Each Party acknowledges that the final decision whether to disclose such information will rest with the Requesting Party and not with any other Party.



- 6.11.4 Nothing contained in this Agreement or any documents or negotiations relating to this Agreement shall prevent the Requesting Party from disclosing any information which (in the Requesting Party's reasonable opinion or in accordance with any recommendation, notice or decision of a competent authority) it is required to disclose under the FOIA, EIR or Audit Act (as applicable).
- 6.11.5 Each Party shall maintain an adequate records management system which will enable it to access the information within the time limits prescribed by the FOIA, EIR and/or the Audit Act (as applicable).
- 6.11.6 Each Party shall indemnify the Requesting Party against all claims, demands, actions, costs, proceedings and liabilities that the Requesting Party directly incurs due to the other Party's breach of clauses 6.11.2 to 6.11.5 (inclusive).

**6.12 Confidentiality**

- 6.12.1 Subject to clause 6.12.2, each Party shall keep confidential all information obtained from the other Parties or through its delivery or receipt of the Services.
- 6.12.2 Clause 6.12.1 shall not apply to any information which:
  - 6.12.2.1 is or becomes public knowledge (otherwise than by a breach of clause 6.12.1);
  - 6.12.2.2 was in the possession of the Party concerned without restriction as to its disclosure before receiving it from any other Party;
  - 6.12.2.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; and/or
  - 6.12.2.4 is disclosed in accordance with clauses 6.12.2.1 to 6.12.2.3 (inclusive).
- 6.12.3 Each Party shall ensure that all its Staff engaged in the delivery or receipt of the Services or otherwise with access to information relating to this Agreement and/or the Services shall comply with clauses 6.12.1 and 6.12.2.

- 6.12.4 Nothing in clauses 6.12.1 to 6.12.3 (inclusive) shall prevent the Parties from disclosing information under or in accordance with any legal requirement, or in accordance with any lawful requirements made by any regulatory body or inspectorate established by Law.

## **7. Intellectual Property**

- 7.1 For the avoidance of doubt, all Intellectual Property relating to or used in connection with this Agreement and/or the Services shall continue to vest in each of the Parties as it did prior to the Commencement Date.
- 7.2 Each Party grants each other Party a non-exclusive, non-transferrable (except in the case of statutory or voluntary re-organisation) royalty free, right and licence to use its Intellectual Property so far as it is needed for the purposes of this Agreement.

## **8. Insurance**

- 8.1 NYCC and CYC shall have in place and maintain public liability insurance against its liabilities under this Agreement for death, injury and/or third party damage for the sum of £5 million for any one occurrence.
- 8.2 NYCC and CYC shall have in place and maintain employer's liability insurance against its liabilities under this Agreement for death, injury and/or third party damage for the sum of £10 million for any one occurrence.
- 8.3 NYCC shall have in place and maintain professional indemnity insurance for the sum of £5 million pounds for each and every claim, or series of claims in the aggregate during the period of insurance.
- 8.4 NYCC shall supply to CYC (on written request) documentary evidence of the insurances in place to establish that Party's compliance with clauses 0 to 8.3 (inclusive).

## **9. Limitation of Liability**

- 9.1 This clause sets out each Party's entire liability (including any liability for the acts and omissions of their respective Staff) to the other Party in respect of an Event of Default.
- 9.2 NYCC shall be liable for all actions, claims, proceedings and demands arising out of personal injury (including death) or damage to or loss of property which arises out of its negligent act or default in carrying out the Services. CYC shall be liable for all

actions, claims, proceedings and demands arising out of personal injury (including death) or damage to or loss of property which arises out of its negligent act or default.

9.3 Except to the extent permitted by Law each Party's liability to the other (other than any liability to pay the Costs for the Services under this Agreement) shall be limited to 1 million pounds

9.4 Subject to the provisions of clause 0, no Party is liable to any other Party or to any third party, whether in contract, tort, under statute or otherwise (including in each case negligence) or otherwise for any of the following types of loss or damage arising under or in relation to this Agreement:

9.4.1 any loss of profits, business contracts, anticipated savings, goodwill or revenue; and/or

9.4.2 any indirect or consequential loss or damage whatsoever,

including where a Party was advised in advance of the possibility of such loss or damage arising.

9.5 Each Party acknowledges and agrees that the provisions of this clause 9 are reasonable and are reflected in the amount of the Costs, and each Party hereby accepts such risk and shall insure such risk accordingly if it considers (at its absolute discretion) that insurance is necessary.

9.6 Each Party shall at all times take all reasonable steps to minimise and mitigate any losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Agreement.

9.7 For the sake of clarity CYC is responsible for (1) any liabilities or claims which are the cause of its acts or omissions as a result of it either not following the advice and guidance provided by the Shared Health and Safety Team or not properly implementing that advice and guidance provided that the advice and guidance is not shown to be negligent, and (2) any breach of its statutory functions as long as a breach is not caused by negligent advice or guidance provided by the Shared Health and Safety Team in the course of the Agreement .

9.8 Each party will indemnify the other against claims brought as a result of a breach of any of their respective liabilities.

## **10. Termination**

10.1 Either Party may terminate this Agreement with immediate effect without written notice if the other Party:

10.1.1 commits a material breach of this Agreement which is capable of remedy and the Party fails to remedy the breach within a reasonable time of a written notice to do so; or

10.1.2 commits a material breach of this Agreement which cannot be remedied.

10.2 Either Party may terminate this Agreement by giving at least twelve (12) months' notice in writing to the other Party.

## **11. Consequences of Termination**

11.1 In the event this Agreement is terminated the following provisions of this clause 11 shall apply and each Party shall cooperate fully with each other to ensure an orderly end to the relevant arrangements in respect of the delivery of the Services.

11.2 In addition to any other rights or remedies which the Parties may have against each other each Party shall pay to the other Party any Costs due and payable to that Party for any Services already delivered in addition to such costs incurred or committed for disbursements by the Party or a third party subcontractor of either of them (as applicable) prior to the date of the termination.

## **12. Dispute Resolution**

12.1 Any dispute or difference which arises between any of the Parties as to the construction of this Agreement, as to their respective rights, duties and obligations or as to any other matter arising out of or connected with the Agreement ("**Dispute**") shall be determined in accordance with the provisions of this clause 12.

12.2 Each Authorised Representative which is representing a Party in a Dispute shall consult in good faith in an attempt to come to an agreement in relation to the Dispute.

12.3 If the Authorised Representatives are unable to reach an agreement following the consultation referred to in clause 12.2 then the matter shall be referred to the respective Chief Executives of the Parties who shall use all reasonable endeavours to resolve such Dispute.

- 12.4 If the Parties are unable to reach an agreement following the consultation referred to in clause 12.3, the Parties shall submit the Dispute to a neutral adviser appointed by agreement between them to assist them in resolving the Dispute. Any Party may give written notice to the other(s) describing the nature of the Dispute, requiring it to be submitted to such a neutral adviser and proposing the name of a suitable person to be appointed. If no such person is appointed by agreement within ten (10) Working Days after such notice is given or, if no such notice is given within twenty (20) days after the dispute has arisen, any Party may request the Centre for Dispute Resolution to appoint a neutral adviser acceptable to the Parties.
- 12.5 The Parties shall, with the assistance of the neutral adviser appointed in accordance with clause 12.4, seek to resolve the Dispute by using an alternative dispute resolution ("**ADR**") procedure agreed between the Parties or, in default of such agreement established by a mutual adviser.
- 12.6 If the Parties accept any recommendations made by the neutral adviser or otherwise reach agreement as to the resolution of the Dispute, such agreement shall be recorded in writing and signed by the Parties and, if applicable, the neutral adviser and it shall be binding upon each Party.
- 12.7 If:
- 12.7.1 the Dispute has not been resolved to the satisfaction of the Parties within forty (40) Working Days after the appointment of the neutral adviser; or
  - 12.7.2 a Party fails or refuses to agree or participate in the ADR procedure; or
  - 12.7.3 in any event the dispute is not resolved within sixty (60) Working Days after it has arisen,
- then the dispute shall be resolved under clause 12.8 (below).
- 12.8 Any Dispute which is to be resolved under this clause 12.8 shall be resolved by the decision of an expert whose decision shall, save as to manifest error, be final and binding on the Parties. The expert shall be appointed by agreement between the Parties or, if within ten (10) Working Days after the Dispute fails to be resolved as otherwise provided by this clause 12, the Parties have been unable to agree on the appointment of an expert, any Party may apply to the President for the time being of the Chartered Institute of Arbitrators to appoint an expert.

12.9 In the event that any costs and fees incurred by the Parties are not met in accordance with an agreement reached through the ADR procedure or in accordance with a decision reached by the expert under clause 12.8 (above) each Party shall be responsible for its own costs.

### **13. Changes**

13.1 Without prejudice to the other relevant provisions of this Agreement, any Party may at any time during the Term request a Change to the terms of this Agreement including a change to the Services.

13.2 No deletion from, addition to, or variation of this Agreement or the Schedules shall be valid unless agreed in writing and signed by authorised signatories on behalf of each of the Parties.

### **14. Publicity**

Each Party agrees not to use any other Party's name or the existence of this Agreement in any publicity materials or advertising without the prior written consent of the other Parties, such consent not to be unreasonably withheld or delayed.

### **15. TUPE**

TUPE may apply to any Relevant Transfer of Staff under this Agreement (including at its termination). Where TUPE applies, the provisions of Schedule 4 of this Agreement apply.

### **16. Assignment and Sub Contracting**

Neither Party shall assign or transfer this Agreement or any of the obligations or rights under this Agreement in whole or in part (save to any legal entity with which a Party merges or which is a successor body to the Party and for the avoidance of doubt this includes by reason of statutory or voluntary reorganisation of CYC) without the prior written consent of the other Party.

### **17. Rights of Third Parties**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

## **18. Notices**

- 18.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the relevant Party (at the address given at the front of this Agreement) and for the attention of the Authorised Representative, or as otherwise specified by the relevant Party by notice in writing to the other Party.
- 18.2 Any notice shall be deemed to have been duly received if delivered personally, when left at the appropriate address and for the appropriate contact referred to in clause 18.1 or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 18.3 This clause 18 shall not apply to the service of any in any proceedings or other documents in any legal action.
- 18.4 A notice required to be given under or in connection with this Agreement shall not be validly served if sent by e-mail.

## **19. Waiver**

- 19.1 The rights and remedies of the Parties in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by any Party nor by any failure of, or delay by a Party in ascertaining or exercising any such rights or remedies.
- 19.2 Any waiver of any breach of this Agreement shall be in writing and signed by all relevant Parties.
- 19.3 The waiver by any Party of any breach of this Agreement shall not prevent the subsequent enforcement of any subsequent breach of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

## **20. No Agency**

Nothing in this Agreement is intended to, or shall be deemed to, establish any Party as the agent of the other or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

## **21. Further Assurance**

- (a) Each Party shall at its own cost and expense do or procure to be done all such further acts and things and execute or procure the execution of all such documents as may from time to time be necessary for the purpose of giving effect to the provisions of and the benefits and rights granted pursuant to this Agreement.
- (b) No activities undertaken by either NYCC or CYC outside the scope of this Agreement will impact on the liabilities contained herein of the other party and any indemnities herein will not relate or extend to such activities.

## **22. Severance**

- 22.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force without affecting the remaining provisions of this Agreement.
- 22.2 If any provision of this Agreement is held to any extent invalid or unenforceable the Parties agree to immediately commence negotiations in good faith in order to remedy such invalidity or unenforceability and substitute a valid and enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

## **23. Entire Agreement**

This Agreement (including the Schedules and any documents referred to therein) represents the entire agreement between the Parties and supersedes all other undertakings, statements and agreements relating to the subject matter of this Agreement.

## **24. Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed shall be an original and all the counterparts together shall constitute one and the same instrument.



**25. Governing Law and Jurisdiction**

This Agreement shall be governed by English Law and all Parties agree to submit to the exclusive jurisdiction of the English Courts.

EXECUTED as a DEED

by the affixing of the COMMON SEAL of

**NORTH YORKSHIRE COUNTY  
COUNCIL**

in the presence of: .....

Authorised Signatory

EXECUTED as a DEED

by the affixing of the COMMON SEAL of

**CITY OF YORK COUNCIL**

in the presence of: .....

Authorised Signatory

## Schedule 1 - Services

### 1. Provision of the Service by NYCC via the Shared Health and Safety Team to CYC

1.1 NYCC will provide the Service to both NYCC and CYC. The management of the team enables both NYCC and CYC to comply with the requirement of regulation 7 and other statutory requirements of the Management of Health and Safety Regulations 1999 to access competent health and safety assistance.

1.2 NYCC will provide to CYC strategic leadership on all Health and Safety matters which includes:

- i. Promotion of a Health and Safety Culture in CYC
- ii. Assistance and support in accident and incident investigations including RIDDOR reporting and liaison with regulators and other agencies (including HSE, Fire and Rescue Services and Police)
- iii. Advice on local policy and procedure development
- iv. Health and safety advice and guidance in respect of all CYC's statutory functions
- v. Assistance to managers in the conduct of risk assessments and/or assistance in completion of fire risk assessments
- vi. Asbestos Management Reviews
- vii. Assistance with training identification and delivery of health and safety courses
- viii. Audit and monitoring of services as regards health and safety performance
- ix. Assistance with measuring and reviewing H&S performance
- x. Attendance at relevant Portfolio Holder, Executive and Council meetings as appropriate
- xi. Advice to the CYC Safety Advisory Group (SAG) regarding Event Safety
- xii. Presence at appropriate formal Trade Union Health and Safety meetings in particular (for CYC) the Joint Health and Safety Committee quarterly and the Department Health and Safety Committees as appropriate

1.3 NYCC, in addition through the Shared Head of Health and Safety will:

- i. Contribute to CYCs business planning
- ii. Attend Departmental Management Team and Council Team Meetings as required
- iii. Contribute as a Member of each council's management arrangements such as the CYC Leading Together cohort

1.4 The Service to NYCC and CYC will be tailored to meet the needs and priorities of NYCC and CYC through liaison with the Authorised Representatives.

## **2. Provision and oversight of the Service**

2.1 The Shared Head of Health and Safety and all those staff delivery services as part of this Agreement will be employed (or commissioned in the case of agency staff) by NYCC who will act as host for the Services and ensure delivery of this Agreement on a day to day basis.

2.2 The performance of the Services will be overseen and monitored by a Client Group consisting of an Assistant Director from both NYCC and CYC, supported by a finance representative from both CYC and NYCC and the Shared Head of Health and Safety.

2.3 The role of the Client Group will be to monitor this Agreement and the Services to be delivered in accordance with this Agreement and to ensure service delivery, quality and performance are maintained and delivered.

2.4 The Parties shall prepare an annual performance report for review by the Client Group.

## **Schedule 2 - Principles of Collaboration**

The Parties shall adopt the following principles:

1. Collaborate and co-operate: Establish and adhere to the governance structure set out in this Agreement to ensure that activities are delivered and actions taken as required;
2. Be accountable: Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this Agreement;
3. Be open: Communicate openly about major concerns, issues or opportunities relating to the Services and this Agreement;
4. Learn, develop and seek to achieve full potential: Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
5. Adopt a positive outlook: behave in a positive, proactive manner;
6. Adhere to statutory requirements and best practice: Comply with applicable laws and standards including the Directive, the Regulations, the Data Protection Legislation and legislation in relation to freedom of information;
7. Act in a timely manner;
8. Manage stakeholders effectively;
9. Deploy appropriate resources: Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this Agreement; and
10. Act in good faith to support compliance with these Principles of Collaboration.

### **Schedule 3 – Costs and Sharing**

#### **1. Costs**

- 1.1 CYC shall pay their annual contribution in relation this Agreement (which is equivalent to the total CYC health and safety service budget), currently 30% of the operational budget for the Services, to NYCC on the Commencement Date and then on the 1<sup>st</sup> May each year thereafter for the duration of the Term.
- 1.2 The remaining 70% of the operational budget for the Services shall be met by NYCC.
- 1.3 NYCC shall raise an invoice against a CYC purchase order for payments due under this Agreement in a format to be agreed. The ongoing and total cost of the Services will be monitored and agreed by the Client Group for the duration of the Term.
- 1.4 In the event that any:
  - (a) additional contributions are required from either Party during the Term over and above the operational budget for the Services (as referred to in paragraphs 1.1 and 1.2 above); and/or
  - (b) additional Staff are required during the Term,this shall be discussed and agreed by the Client Group in advance.

## Schedule 4 – TUPE and Staff Management

### 1. Interpretation

1.1 In this Schedule 4, capitalised terms shall have the meaning given to them in clause 1 of this Agreement and in addition the following terms shall have the meanings as follows:

**Administering Authority** means the relevant LGPS administering authority acting in its capacity as the administering authority of the relevant part of the LGPS Pension Fund for the purposes of the LGPS Regulations;

**Admission Body** means an admission body for the purposes of paragraph 1 of Part 3 of Schedule 2 to the LGPS Regulations;

**ARD** means EC Council Directive 2001/23/EC;

**Compensation Regulations** means the Local Government (Early Termination of Employment) (Discretionary Compensation) England and Wales Regulations 2006 (SI 2006/2914);

**Eligible Employees** means:

- (a) Transferring Employees whose employment transfers to NYCC or any other relevant sub-contractor and who are active members of or have the right to acquire benefits under the LGPS on a Services Commencement Date;
- (b) the Transferring Original Employees who are active members of or have the right to acquire benefits under either the LGPS or a broadly comparable pension scheme provided by their existing employer on a Services Commencement Date; and

for so long as they are employed in connection with the provision of the Services or part of such Services;

**Employee Costs**

means:

(a) any right to a redundancy payment (whether contractual or otherwise), notice pay (including benefits) or payment in lieu of notice (including benefits), and any accrued but untaken holiday entitlements due to any Transferring Employees which are required by Law or by contract to be made to such Transferring Employees and which arise as a result of their dismissal under this Agreement where lawful notice is given within five (5) Working Days of the end of the Offer Period; and

(b) any basic award and/or compensation awarded to any Transferring Employee in respect of any unfair dismissal claim arising out of or in relation to the dismissal of any Transferring Employee in the circumstances described (provided that notice of termination is given within five (5) Working Days of the end of the Offer Period), and any claim arising from a failure by a Party to comply with its obligations to inform and consult or procure the election of representatives under TUPE;

**Employee Liability Information**

means the employee liability information to be provided pursuant to Regulation 11 of TUPE;

**LGPS**

means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972

**LGPS Regulations**

means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356), as amended;



|                                       |   |
|---------------------------------------|---|
| <b>Relevant Employees</b>             | means those employees who are the subject of a Relevant Transfer;   |
| <b>Return Date</b>                    | means in respect of any of the Services the date on which NYCC or any other relevant sub-contractor ceases to provide such Services to CYC for any reason;  |
| <b>Returning Employees</b>            | means those employees wholly or mainly engaged in the provision of any of the Services at or immediately before the cessation of provision of such Services by NYCC or any other relevant sub-contractor and whose employment transfers to CYC pursuant to TUPE;  |
| <b>Services Commencement Date</b>     | means for the purposes of this Schedule 4 the date on which NYCC or any other relevant sub-contractor begins to provide Services to CYC;  |
| <b>Services Termination Date</b>      | means for the purposes of this Schedule 4 the date on which NYCC or any other relevant sub-contractor ceases to provide Services to CYC;  |
| <b>Terminated Service</b>             | means any or all of the Services which NYCC or any other relevant sub-contractor ceases to provide for whatever reason;   |
| <b>Transferee Admission Agreement</b> | means an admission agreement entered into in accordance with the LGPS Regulations by the Administering Authority and NYCC or any other relevant sub-contractor (as applicable);   |
| <b>Transferring Employee</b>          | means an employee of CYC whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Agreement between CYC and NYCC, a contract of employment with a person other than NYCC; and |

- Transferring Original Employee** means an employee of CYC:
- (a) who became, by the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or TUPE in relation to what was done for the purposes of carrying out a contract between a local government employer and another body, an employee of a person other than the local government employer;
  - (b) whose contract of employment on each occasion when an intervening contract was carried out became, by virtue of the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or TUPE in relation to what was done for the purposes of carrying out the intervening contract, a contract of employment with a person other than his or her existing employer; and
  - (c) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Agreement, a contract of employment with a person other than CYC.

For the purposes of this definition, "intervening contract" has the meaning ascribed to that phrase in paragraph 10 of the Best Value Authorities Staff Transfers (Pensions) Direction 2007.

- 1.2 In this Schedule 4, all references to NYCC that it or any other relevant sub-contractor of NYCC shall or shall not take certain actions shall create a duty on NYCC to take such steps to procure that such actions shall or shall not be taken as are reasonable in all of the circumstances of the case, including but not limited to the ability of NYCC to compel such sub-contractor to take, or refrain from taking, such actions.

## **2. Commencement**

The Parties agree that TUPE and the ARD apply on the Commencement Date and that there may be individuals presently employed by CYC whose contracts of employment will transfer to NYCC (whether in accordance with TUPE or otherwise).

## **3. Accession of CYC**

### *Emoluments and Outgoings*

- 3.1 NYCC shall procure that NYCC is and all other relevant sub-contractors are responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by NYCC or any such sub-contractor in connection with the provision of any of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, (subject to paragraph 5) pension contributions and otherwise, accruing from and including the relevant Services Commencement Date.

### *Union Recognition*

- 3.2 NYCC shall procure that neither NYCC nor any other relevant sub-contractor shall adversely amend any terms and conditions of employment of any employee engaged in the provision of any of the Services where the amendment of such terms and conditions is governed by any collective agreement applicable to the relevant employees' employment, in which case any such adverse amendment of terms and conditions shall take place in accordance with the terms of the applicable collective agreement. This paragraph shall not apply in the case of amendments to terms and conditions required to comply with Law.

### *Indemnities*

- 3.3 NYCC shall indemnify and keep indemnified in full CYC, against
- 3.3.1 all claims, demands, actions, costs, proceedings and liabilities incurred by CYC in connection with or as a result of a breach by NYCC of its obligations under this Agreement; and
  - 3.3.2 all claims, demands, actions, costs, proceedings and liabilities incurred by CYC in connection with or as a result of any claim by any Relevant

Employee, trade union or staff association or employee representative (whether or not recognised by NYCC and/or any other relevant sub-contractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by NYCC and/or any of its sub-contractors to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 of TUPE, under the ARD or otherwise and, whether any such claim arises or has its origin before or after the date of the relevant Services Commencement Date.

3.4 NYCC shall indemnify and keep indemnified in full CYC against all claims, demands, actions, costs, proceedings and liabilities incurred by CYC in connection with or as a result of:

3.4.1 any claim by any Relevant Employee that any proposed or actual substantial change by NYCC or any other relevant sub-contractor to the Relevant Employees' working conditions or any proposed measures of NYCC or any other relevant sub-contractor are to that employee's detriment whether such claim arises before or after the relevant Services Commencement Date; and

3.4.2 any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by NYCC or any other relevant sub-contractors to the Relevant Employees or their representatives whether before on or after the relevant Services Commencement Date and whether liability for any such claim arises before on or after the relevant Services Commencement Date.

3.5 The indemnities in this Agreement shall not apply in respect of any sum for which CYC is to indemnify NYCC (on its own behalf and on behalf of NYCC or any other relevant sub-contractor) pursuant to this Agreement or to the extent that the claim arises from a wrongful act or omission of CYC.

*Provision of Details and Indemnity*

3.6 NYCC shall procure that NYCC and any other relevant sub-contractor shall as soon as reasonably practicable and in any event within ten (10) Working Days following a written request by CYC provide to CYC details of any "measures" which NYCC or any of its sub-contractors envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and shall indemnify CYC against all claims,

demands, actions, costs, proceedings and liabilities resulting from any failure by NYCC to comply with this obligation.

*Change of provider of the Services*

- 3.7 On the cessation of the provision of any Services by NYCC or any other relevant sub-contractor for any reason ("**Terminated Services**"), CYC and NYCC agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to the Terminated Services but the position shall be determined in accordance with the law at the date of expiry or termination as applicable and this paragraph is without prejudice to such determination.
- 3.8 NYCC shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of NYCC or any other relevant sub-contractors who had been engaged in the provision of the Terminated Services and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Returning Employees accruing up to the Return Date are satisfied, and NYCC shall indemnify and shall keep indemnified in full CYC against all claims, demands, actions, costs, proceedings and liabilities arising from any breach of NYCC's obligations under this Agreement.
- 3.9 CYC shall ensure or shall procure that all wages, salaries and other benefits of the Returning Employees, and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Returning Employees accruing on and after the Return Date are satisfied.
- 3.10 Without prejudice to paragraph 3.8, NYCC shall:
- 3.10.1 procure that NYCC and all other relevant sub-contractors remain responsible for all NYCC's or the relevant sub-contractors' employees (other than the Returning Employees) on or after the Return Date, and indemnify CYC) against all claims, demands, actions, costs, proceedings and liabilities incurred by CYC resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of NYCC's or any other relevant sub-contractor's employees who do not constitute the Returning Employees; and
  - 3.10.2 in respect of those employees who constitute Returning Employees, indemnify CYC against all claims, demands, actions, costs, proceedings

and liabilities incurred by CYC resulting from any claim whatsoever by or on behalf of any of the Returning Employees arising out of or in respect of the period on or after the Services Commencement Date but on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) where such claim arises out of any act, fault or omission of NYCC or any other relevant sub-contractor including but not limited to any failure by NYCC or such sub-contractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the ARD as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of CYC.

3.11 NYCC shall procure that NYCC and other relevant sub-contractors shall discharge all of its or their obligations arising under TUPE in respect of or in connection with its or their ceasing to provide any of the Services for any reason and acknowledges that the indemnities it gives in this Agreement above shall be without prejudice to:

3.11.1 any remedies available to CYC in respect of any alleged failure by NYCC or any other relevant sub-contractor to discharge such obligations (and in particular under Regulation 12 of TUPE); or

3.11.2 any arguments which CYC may wish to advance in defence of any claims made by employees or their representatives in respect of any alleged breaches of Regulations 13 and 14 of TUPE and/or Article 6 of the ARD.

#### *Sub-Contractors*

3.12 In the event that NYCC or any other relevant sub-contractor enters into any sub-contract in connection with this Agreement, NYCC shall procure that NYCC or such relevant sub-contractor shall impose obligations on its sub-contractors in the same terms as those imposed on it pursuant to this Agreement and shall procure that each sub-contractor complies with such terms.

3.13 NYCC shall indemnify and keep CYC indemnified in full against all claims, demands, actions, costs, proceedings and liabilities incurred by CYC as a result of or in connection with any failure on the part of NYCC to procure the compliance by NYCC and/or any other relevant sub-contractor within this Agreement.

#### **4. Employees – General**

##### *NYCC's Employees*

- 4.1 NYCC shall procure that NYCC and other relevant sub-contractors shall during the period of delivery of Services to CYC be entirely responsible for the employment and conditions of service of all employees engaged in the provision of such Services.

##### *Work Permits*

- 4.2 NYCC shall procure that all employees engaged in the provision of the Services from time to time (whether employed by NYCC or any sub-contractor) have the right to work in the United Kingdom and to provide the Services, and are in possession of appropriate evidence of such right.

#### **5. Pensions**

##### *NYCC and other relevant sub-contractors to become Admission Bodies*

- 5.1 Where NYCC or any other relevant sub-contractor employs any Eligible Employees from a Services Commencement Date and wishes to offer those Eligible Employees membership of the LGPS, NYCC shall procure that NYCC or the relevant sub-contractor shall become an Admission Body. NYCC shall procure that NYCC and each such relevant sub-contractor shall on or before the relevant Services Commencement Date execute a Transferee Admission Agreement, which will have effect from and including such Services Commencement Date.

##### *Undertaking from NYCC*

- 5.2 NYCC undertakes to CYC (for the benefit of CYC or itself, as agent and trustee for the benefit of the Eligible Employees) that (other than in the implementation of any provision of a collective agreement agreed in line with national practice and procedure) NYCC shall not, and shall procure that no sub-contractor shall, during the term of this Agreement change any term or condition of employment of any Eligible Employee engaged in the Services in a manner which has or may have the effect of increasing the liabilities of CYC under the LGPS or this paragraph 5 without the prior consent of CYC (which shall not be unreasonably withheld).

## SCHEDULE 5 - DATA PROCESSING

1. The contact details of the North Yorkshire County Council's Data Protection Officer is:

Veritau Ltd

County Hall

Racecourse Lane

Northallerton

DL7 8AL

Email: [infogov@northyorks.gov.uk](mailto:infogov@northyorks.gov.uk)

Telephone: 01609 532526

2. The contact details of the Joint Data Protection Officer is:

***Lorraine Lunt, Information Governance & Feedback Team Manager, CYC, West Offices, Station Rise, York.***

3. Pursuant to clause 6.9 of the Agreement, NYCC shall process the Personal Data as follows and any further instructions from the Council shall be incorporated into this Schedule 5.

| Description                      | Details  |
|----------------------------------|--|
| Subject matter of the processing | NYCC through the Shared Health and Safety Team acts as the source of competent health and safety advice in accordance with the Management of Health and Safety at Work Regulations (The Data Processor).<br><br>Personal and personal sensitive data will be processed under the NYCC-CYC Health and Safety Collaboration Agreement for the purposes set out in the Agreement and otherwise in the furtherance of the arrangements between the Parties, in each case in connection with the provision of the Services. |



|   |  |
|---|--|
| <p>Duration of the processing</p>             | <p>The duration of processing shall commence on the Commencement Date and continue unless and until terminated:</p> <p>(a) as provided by the terms of the NYCC-CYC Health and Safety Collaboration Agreement or</p> <p>(b) by either party giving to the other not less than twelve (12) months' prior written notice in accordance with clause 10 of the NY-CYC HS Collaboration Agreement.</p>  |
| <p>Nature and purposes of the processing</p>  | <p><i>NYCC through the Shared Health and Safety Team acts as the source of competent health and safety advice in accordance with the Management of Health and Safety at Work Regulations 1999 (The Data Processor).</i></p> <p><i>The Shared Health and Safety Team will be provided with personal information following an accident or an incident, or after an individual specific risk assessment from the relevant Data Controller. The Shared Health and Safety Team will then handle the case on behalf of the Data Controller.</i></p>  |
| <p>Type of Personal Data being processed.</p> | <p><b>Personal Data and Personal Sensitive Data will be processed:</b></p> <p>This will include the:</p> <ul style="list-style-type: none"> <li>• name, date of birth, address and contact details of the subject of the accident,</li> <li>• details of the incident, and/or risk assessments including personal e.g. new and expectant mothers, young persons, individual etc.</li> <li>• Information of injuries and/or medical conditions and histories if appropriate.</li> <li>• Witness statements</li> <li>• Relevant correspondence/records (e.g. emails, risk assessments, previous incident reports);</li> <li>• Training and other similar records;</li> <li>• CCTV and /or photographs (including those of the relevant injury).</li> </ul> |

| <p>Categories of Data Subject</p>   | <p>Depending on the circumstances, the Personal Data may concern one or more of the following categories of Data Subjects (as determined by North Yorkshire County Council or agreed between the Parties) and such other categories as North Yorkshire County Council may specify or the Parties may agree from time to time:</p> <ul style="list-style-type: none"> <li>• Staff members from the relevant Data Controllers Organisations;</li> <li>• Members of the public</li> </ul>  |           |                  |  |   |   |   |
|---|---|-----------|------------------|--|---|---|---|
| <p>Plan for return and destruction of the Personal Data once the processing is complete UNLESS requirement under union or member state law to preserve that type of Personal Data</p> | <p>Data must be retained as follows (where legal proceedings have been undertaken then the data will be retained until such time as these proceeding are fully completed – this includes any statutory appeal periods:</p> <table border="1" data-bbox="647 1039 1385 2047"> <thead> <tr> <th data-bbox="647 1039 1015 1111">Data held</th> <th data-bbox="1015 1039 1385 1111">Retention period</th> </tr> </thead> <tbody> <tr> <td data-bbox="647 1111 1015 1899"> <p><b>Accident/Incident Records including investigation reports and supporting documentation</b></p> </td> <td data-bbox="1015 1111 1385 1899"> <p><b>For 4 years or longer if necessary to be in accordance with particular statutory requirements depending upon the circumstances of the incident. For example :-</b></p> <p>-Children's information must be kept until their 21<sup>st</sup> birthday (or to their 25<sup>th</sup> birthday if the young person has special educational needs.) Adults' information must be kept for three years after the incident.</p> <p>-Information relating to asbestos or other health-related incidents is kept for 40 years.</p> <p>- 50 years in the case of an incident involving exposure to ionising radiation</p> </td> </tr> <tr> <td data-bbox="647 1899 1015 2047"> <p><b>Individual Risk Assessments</b></p> </td> <td data-bbox="1015 1899 1385 2047"> <p><b>In accordance with legal requirements depending upon circumstances.</b></p> </td> </tr> </tbody> </table> | Data held | Retention period | <p><b>Accident/Incident Records including investigation reports and supporting documentation</b></p> | <p><b>For 4 years or longer if necessary to be in accordance with particular statutory requirements depending upon the circumstances of the incident. For example :-</b></p> <p>-Children's information must be kept until their 21<sup>st</sup> birthday (or to their 25<sup>th</sup> birthday if the young person has special educational needs.) Adults' information must be kept for three years after the incident.</p> <p>-Information relating to asbestos or other health-related incidents is kept for 40 years.</p> <p>- 50 years in the case of an incident involving exposure to ionising radiation</p> | <p><b>Individual Risk Assessments</b></p> | <p><b>In accordance with legal requirements depending upon circumstances.</b></p> |
| Data held   | Retention period  |           |                  |  |   |   |   |
| <p><b>Accident/Incident Records including investigation reports and supporting documentation</b></p>  | <p><b>For 4 years or longer if necessary to be in accordance with particular statutory requirements depending upon the circumstances of the incident. For example :-</b></p> <p>-Children's information must be kept until their 21<sup>st</sup> birthday (or to their 25<sup>th</sup> birthday if the young person has special educational needs.) Adults' information must be kept for three years after the incident.</p> <p>-Information relating to asbestos or other health-related incidents is kept for 40 years.</p> <p>- 50 years in the case of an incident involving exposure to ionising radiation</p>   |           |                  |  |   |   |   |
| <p><b>Individual Risk Assessments</b></p>   | <p><b>In accordance with legal requirements depending upon circumstances.</b></p>   |           |                  |  |   |   |   |

|  |  |   |
|--|--|---|
|  |  | <p>For example, information relating to a fire risk assessment should be kept for 6 years for insurance purposes, but risk assessments on asbestos must be kept for 60 years.</p> |
| <p>Data maybe returned to the Data Controller, upon termination of the agreement if requested.</p> |  |   |