

**Notice of a public
Decision Session - Executive Member for Finance and Performance**

To: Councillor Ayre (Executive Member)

Date: Monday, 16 December 2019

Time: 3.00 pm

Venue: The King Richard III Room (GO49) - West Offices

AGENDA

Notice to Members – Post Decision Calling In:

Members are reminded that, should they wish to call in any item* on this agenda, notice must be given to Democratic Services by **4.00pm on Wednesday 18 December 2019.**

*With the exception of matters that have been the subject of a previous call in, require Full Council approval or are urgent which are not subject to the call-in provisions. Any items that are called in will be considered by the Customer and Corporate Services Scrutiny Management Committee.

Written representations in respect of items on this agenda should be submitted to Democratic Services by **5.00pm on Thursday 12 December 2019.**

1. Declarations of Interest

At this point in the meeting, the Executive Member is asked to declare:

- any personal interests not included on the Register of Interests
 - any prejudicial interests or
 - any disclosable pecuniary interests
- which he may have in respect of business on this agenda.

- 2. Minutes** (Pages 1 - 6)
To approve and sign the minutes of the Decision Sessions held on 18 and 26 November 2019.

- 3. Public Participation**
At this point in the meeting, members of the public who have registered to speak can do so. The deadline for registering is **5.00pm on Friday 13 December 2019**. Members of the public can speak on agenda items or matters within the Executive Member's remit.

To register to speak please contact the Democracy Officer for the meeting, on the details at the foot of the agenda.

Filming, Recording or Webcasting Meetings

Please note that, subject to available resources, this meeting will be filmed and webcast, or recorded, including any registered public speakers who have given their permission. The broadcast can be viewed at <http://www.york.gov.uk/webcasts> or, if recorded, this will be uploaded onto the Council's website following the meeting.

Residents are welcome to photograph, film or record Councillors and Officers at all meetings open to the press and public. This includes the use of social media reporting, i.e. tweeting. Anyone wishing to film, record or take photos at any public meeting should contact the Democracy Officer (contact details are at the foot of this agenda) in advance of the meeting.

The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at https://www.york.gov.uk/downloads/file/11406/protocol_for_webcasting_filming_and_recording_of_council_meetings_20160809

- 4. Health & Safety Interim Report 2019/20** (Pages 7 - 68)
This report presents the Interim Report on the work of the Health & Safety (H&S) shared service operating on behalf of City of York Council (CYC) and North Yorkshire County Council, and provides an update on H&S incidents and the annual review of CYC H&S policy.

5. Approval of YFAS furniture & white goods contract with a whole life contract value of over £250k (Pages 69 - 74)

This report presents the proposal to tender the York Financial Assistance Scheme (YFAS) furniture & white goods contract. This has been defined as a routine procurement as per the council's contract procedure rules and expenditure will fall within existing revenue budget provision. The decision-making route however is through the Executive Member given the level of expenditure and required transparency around such procurements.

6. Urgent Business

Any other business which the Executive Member considers urgent under the Local Government Act 1972.

Democratic Services:

Contact details:

- Telephone – (01904) 551088
- E-mail – democratic.services@york.gov.uk

For more information about any of the following, please contact Democratic Services:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 **(01904) 551550**

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City of York Council

Committee Minutes

Meeting	Decision Session - Executive Member for Finance and Performance [previously Executive Leader (inc. Finance & Performance)]
Date	18 November 2019
Present	Councillor Ayre

19. Declarations of Interest

The Executive Member was invited to declare, at this point in the meeting, any personal interests not included on the Register of Interests, or any prejudicial or disclosable pecuniary interests, which he might have in the business on the agenda. No additional interests were declared.

20. Minutes

Resolved: That the minutes of the Executive Member for Finance and Performance Decision Session held on 16 September 2019 be approved and then signed by the Executive Member as a correct record.

21. Public Participation

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

22. Approval of ICT procurements with a whole life contract value of over £250k

The Executive Member considered a report that presented proposals to renew or replace any core ICT systems in the council with a whole life contract value of over £250k. These had been defined as non-key routine procurements as per the council's contract procedure rules and the expenditure fell within existing capital and revenue budget provisions.

The Assistant Director for Customer and Digital Services was in attendance to present the proposals. She noted the contract procedure rules and

outlined the capital savings that would be made through the extension to the payments system, as detailed in Annex A of the report. She then explained the procurement of a new replacement document management rather than an upgrade to the existing system as detailed in Annex B of the report. In response to a question from the Executive Member she confirmed that Leeds City Council was the neighbouring council that had used their own DMS platform to enable sharing of information across health services.

The Executive Member then:

Resolved: That;

- i. Approval be given to the extension to the payments system contract in order to secure capital savings and avoid increases in revenue costs for the next 5 years (as set out in Annex A of the report).
- ii. Agreement be given to the replacement document management system as recommended with a new procurement rather than an upgrade to the existing system (as set out in Annex B of the report).

Reason: To ensure the that councillors consider routine procurement decisions over £250k in value in line with procurement regulations and the public have the opportunity to see transparent decision-making in operation relating to major procurements.

23. Approval of change in scope of ICT Managed Service Procurement

The Executive Member considered a report that outlined a proposed amendment the scope of this procurement first approved by the then Executive on 7 December 2017. The scope had changed in that it will focus only on the requirements of City of York Council. The previous report included a joint procurement with Harrogate Borough Council. The Assistant Director for Customer and Digital Services and Business Engagement Manager were in attendance to present the proposals. The Assistant Director for Customer and Digital Services explained the background to the Managed Services Arrangements, previous Executive approval and change in scope and timescales.

The Executive Member then:

Resolved: That approval be given to the change in scope for this procurement to meet City of York Council's requirements only.

Reason: To ensure the that councillors and the public have the opportunity to review any change in scope to a key decision made by Executive.

Cllr N Ayre, Executive Member

[The meeting started at 3.00 pm and finished at 3.10 pm].

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Meeting	Decision Session - Executive Member for Finance and Performance
Date	26 November 2019
Present	Councillor Ayre (Executive Member)

24. Declarations of Interest

The Executive Member was invited to declare, at this point in the meeting, any personal interests not included on the Register of Interests, or any prejudicial or disclosable pecuniary interests, which he have in the business on the agenda. No additional interests were declared.

25. Exclusion of Press and Public

Resolved: That the public and press be excluded from the meeting during consideration of Annex A to Agenda item 4 on the grounds that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information). This information is classed as exempt under Paragraph 3 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to information) (Variation) Order 2006.

26. Public Participation

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

27. Community Stadium Project – Stadium Naming Rights Sponsorship

The Executive Member considered a report that sought his approval for the Council to enter into an agreement with London North Eastern Railway (LNER) for the Naming Rights Sponsorship at the Community Stadium.

The item had been on the Forward Plan for less than 28 days and had been included on the agenda under the informal urgency procedures. The

reason for this was that approval to enter into the Stadium Naming Rights Sponsorship Agreement was required urgently to maintain wider project timescales and deliverables.

The Stadium Programme Officer was in attendance to present the report. He explained the process for entering the sponsorship agreement, including the external advice that had been taken. The Executive Member thanked Officers for their work, noting that it was positive news for the stadium.

It was then:

Resolved: That authorisation be given to the Acting Chief Executive & Corporate Director of Customer and Corporate Services to arrange execution of the Stadium Naming Rights Sponsorship Agreement.

Reason: To ensure continued progress with the Project, securing a named Sponsor for the Stadium and income to the Project revenue.

Councillor Ayre, Executive Member

[The meeting started at 5.30 pm and finished at 5.33 pm].



Executive Member for the Finance & Performance

16 December 2019

Report of Assistant Director, Customer & Digital Services

Health & Safety Interim Report 2019/20

1. This report presents the Interim Report relating to the work of the Health & Safety (H&S) shared service which operates on behalf of City of York Council (CYC) and North Yorkshire County Council (NYCC). The shared service has been in operation since July 2017 and operates under a collaboration agreement.
2. It also provides an update on H&S incidents and the annual review of the City of York Council H&S Policy. The new draft policy statement (see Annex B) now makes a clear commitment to taking a firm and *'positive approach to health, safety and wellbeing through encouraging active participation, by all stakeholders, in the elimination, where reasonably practicable, or active management of health, safety and wellbeing risk.'*
3. In addition the report presents proposals for changes to the Collaboration Agreement which underpins the delivery of the shared service between CYC and North Yorkshire. Importantly it recommends a change to the current surplus sharing agreement for traded services.
4. The report will assist the Executive Member in proactively monitoring the overall systems and management of health and safety across the council.

Recommendations

5. The Executive Member is asked to:
 - a note the Interim Report including the work of the Shared H&S Service and consider any areas of H&S risk management for further reporting at future decision sessions;
 - b endorse the Corporate Health and Safety Policy;
 - c agree the proposed changes to CYC/NYCC Collaboration Agreement:

- i the minor administrative changes to the report to eg reflect changes in legislation;
- ii the change to the surplus sharing agreement.

Reason: To ensure the Executive Member and residents are assured that H&S services are resilient and the council has proper arrangements in place for managing and responding to H&S risks.

Background

6. The Assistant Director acting as H&S client meets with the Joint Head of Health & Safety on a fortnightly basis to discuss progress, incidents and resources. The Head of Service also reports to Corporate Management Team and to the Shared Service Client Officer Group on a quarterly basis. as laid down in the published agreement which can be found at:

https://www.york.gov.uk/downloads/file/13454/shared_service_agreement

Progress against Key Priorities

7. The interim note at Annex A to this report summarises the Head of Health & Safety's review of Health & Safety work at CYC during the first 6 months of the 2019/20 year.
8. The Assistant Director continues to be satisfied that the Health & Safety Service continues to deliver a robust and sustainable service to the council in full compliance with the requirements of the Collaboration Agreement.

CYC Health and Safety Policy Update

9. Under the provisions of the Health and Safety at work etc. Act 1974 each employer, where they have 5 or more employees, must draw up and bring to the attention of their employees a H&S Policy. CYC has had one in place for a number of years which is updated annually - the revised policy statement has been updated and is attached at Annex B.
10. There is a focus on H&S culture in the new policy statement reflecting the conclusions of a recent session with the Executive Directors and Assistant Directors about what they see as the necessary shift in H&S culture at CYC. These include the steps that need to be taken in light of accidents and incidents, and particularly acts of aggression and violence that continue to dominate the statistics and impact on the wellbeing of the council's workforce. The focus over the next two years delivered through Organisational Development, communications and corporate/directorate Health & Safety Plans will be for CYC employees to 'Go Home Safe, Go Home Healthy'.

Changes to the CYC/NYCC Shared H&S Service Collaboration Agreement

11. The key change is a proposal to change the surplus sharing element of the agreement. The option analysis associated with this decision is summarised in Annex C and the preferred recommendation is to proceed with Option 1 which would see the ending of the surplus sharing agreement.
12. The proposed changes can be found in the amended Collaboration Agreement at Annex D. Many are minor and reflect the changes necessary to reflect eg legislative change such as updated data protection regulations and others relate to the implementation of Option 1 should this be agreed.

Consultation

13. Members of the Corporate Management Team are briefed regularly on key risk areas and issues raised in this report.

Options

14. There are no options relating to Annex A given that the recommendation on the content of the Annual Report are to note the content only. As part of his portfolio monitoring role of H&S matters the Executive Member can identify any areas of specific H&S risk for further reporting at future decision sessions.
15. In relation to the H&S Policy at Annex B the Executive member can choose not to endorse the policy and/or request changes to the policy in light of the information presented regarding incidents and risks at the council. A revised policy can be brought back to a future Decision Session if changes are requested.
16. In relation to the changes to the surplus sharing agreement the Executive member can accept or reject the proposals. Rejection of the proposals could carry the implications as outlined in Annex C, and as outlined in the Analysis and Financial Implications below.
17. In relation to the other minor recommended changes to the Collaboration Agreement there is the option to accept or reject the changes. They have been made by the Legal Teams of both councils and as such would carry legal risks if not implemented.

Analysis

- 18. All information and is contained in the body of the report for recommendations a), b) and c) i).
- 19. In relation to c) ii) the key analysis focuses on the estimated financial analysis of doing nothing or making the change:

	Do Nothing	Change to recommended approach
Core Charge	£214,600	£177,900*
Surplus estimate for 20/21	£38,400**	Reduce and fix at £0
Increase to admin charges to NYCC	£7000***	£0

*Reflects removal of schools (traded service) post

**Could be a plus or minus figure in future years. A minus figure would require a contribution in future years.

*** Does not include CYC costs of resolving ongoing issues with complex finance matters relating to different managing different commercial and non commercial accounts

- 20. The surplus figures in previous years are as follows:
 - a. 2017/18 - £26,995 (part year from July 2019)
 - b. 2018/19 - £53,506
 - c. Estimated 2019/20 - £50,000

Council Plan

- 21. Outcomes achieved by the activities covered in this report help to deliver all priorities in the Council Plan 2019/23 in terms of safe delivery of all frontline services.

Implications

- 22.

a) **Financial:**

- i) The financial implications of Option1 and recommendation c(ii) is that in the short term the proposal is cost neutral. In the long term, given the increasing academisation of schools and the strength of the market place it is likely that the surplus could reduce and/or turn into a loss. The recommendation safeguards the council from this risk. The reserve created from the surplus funds has funded the new corporate H&S IT system, annual pay increases, and H&S communications
- ii) Under Option 1 there will no longer be funding for the H&S reserve which funds CYC ongoing corporate H&S costs eg maintenance of the IT system, and other council wide costs such as those mentioned in 22i) above. A separate base budget will need to be established created from the reduced core service charge to fund such costs in future.

b) **Human Resources (HR):** The report and H&S Policy relates to all employees of the council. The H&S shared service is hosted by NYCC. If recommendation c ii) is supported then there will be a reduction in a post needed to support the schools service which will be reflected in the reduced core service charge. The continuation of the shared service and NYCC trading activity will sustain the service in the long term

c) **Equalities:** None.

d) **Legal:**

- (i) The content of this report contributes to evidence that the council is complying with the Health and Safety at Work etc. Act 1974 and associated regulations.
- (ii) The amendments to the Collaboration Agreement in Annex C have been agreed by the CYC and NYCC legal departments.

e) **Crime and Disorder:** There are no crime and disorder implications to this report.

f) **Information Technology (ICT):** None.

g) **Property:** None

h) **Other:** No known implications.

Risk Management

- 23. The shared service continues to assist the council to mitigate the risk to those affected by the council activities from incidents, accidents and other losses due to the ineffective arrangements as regards health and safety.
- 24. If recommendation c)ii is not supported the risk will be that if losses are incurred by trading in the CYC area that CYC has to contribute to mitigating that loss. The corresponding implication of accepting the recommendation is that CYC can no longer benefit from a share in trading surpluses that occur within the York boundary.

Chief Officers

Contact Details Author:

Responsible for the report:

Pauline Stuchfield
AD Customer & Digital
Services
Tel No. 01904 551706

Ian Floyd
Director of Customer & Corporate Services

Stuart Langston
Shared Head of Health and
Safety
Tel No. 01904 552621

Report Approved



Date 20th November 2019

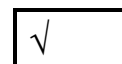
Specialist Implications Officer(s)

Financial: Debbie Mitchell, Corporate Finance & Commercial Procurement
Manager

Legal: Walter Burns, Legal Services

Wards Affected: *List wards or tick box to indicate all*

All



Annexes

Annex A Summary of Health & Safety Service Activity – April to September
2019

Annex B Draft Health & Safety Policy Statement December 2019

- Annex C Options Appraisal for the future Shared Health & Safety Service
- Annex D Revised Draft Collaboration Agreement

Background Papers:

Original Collaboration Agreement Approval – 12th April 2017. Executive Member for the Environment Decision Session:

<https://democracy.york.gov.uk/ieListDocuments.aspx?CId=870&MID=10325>

List of abbreviations used in this report:

CDM	Construction, Design and Management
CMT	Corporate Management Team
CYC	City of York Council
NYCC	North Yorkshire County Council
H&S	Health & Safety
HSE	Health & Safety Executive
SAG	Safety Advisory Group

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Summary of Health & Safety Service Activity – April to September 2019

1. As indicated in the 2018/19 Annual Health and Safety report a key element for managing and monitoring health and safety risk has been an increased focus on projects where City of York Council (CYC) commissions construction work. Some key projects involving the team include the Guildhall, Centre of Excellence and York Explore. In the latter case as the Library serves the city centre community and visitors to York the site was to remain functional for 95% of the project duration. This was successfully achieved. To date there have been 92 active construction projects the Shared Health and Safety Service have been supporting.
2. In addition to the work of the Health and Safety Service, an Internal Audit has also been undertaken on how the council fulfils its duties as Client on the above construction projects (as required by the Construction (Design and Management) Regulations 2015) which concluded that the current systems provide High Assurance.
3. Accidents and incidents do occasionally occur and during the reporting period the team has supported two incidences where there was Health and Safety Executive (the government enforcement agency for health and safety law) who required additional information. These were addressed in conjunction with the relevant CYC services in terms of investigations and any resulting actions.
4. A major project over the past 6 months has been to prepare the health and safety IT system for roll out. This system will not only collect accident and incident data but allow for audit/inspection, risk assessment and ensure safe systems of work are in place. This will encourage active monitoring of health and safety performance and will be used to embed a positive health and safety culture across the organisation. The system should be ready to roll out early in 2020 commencing with the accident and incident reporting module.
5. As well as working with NYCC to develop the joint system, there is work ongoing to ensure data from the old system is up to date ready for archiving including closure of any outstanding actions – this work is ongoing with the officer leads on the Joint Health & Safety Committee and making good progress.
6. As outlined in paragraph 1 a key element of the support is to ensure construction projects are delivered safely. This includes ensuring all parties involved share of essential information prior to construction activities occurring, influencing design and monitoring of construction activities on sites.

7. The majority of projects go well however on occasion the Health and Safety Service needs to challenge practices on site from damaged equipment (photograph 1 damaged stepladders) through to requesting additional protection for waste skips (photograph 2) on site to mitigate the risk of arson or unauthorised access.



8. In addition to the monitoring visits the team continue to support training across a range of council services. For example some key sessions have been provided have been provide on confined spaces, fire safety on construction sites and construction site risk assessments. This is in addition to ongoing asbestos awareness sessions with some 88 people going through refresher sessions on this essential topic.
9. The council's safety management system continue to be updated and refined for example the Substance Misuse Policy went live in 2019. This policy identifies substance misuse as something where affected individuals needs support by encouraging them to have early discussions with their managers so assistance can be provided. However it also acknowledges that it is a significant safety risk so does allow testing when substance is suspected or following an accident or incident.
10. In addition a number of health and safety arrangements were agreed in consultation with the Joint Health and Safety Committee (JHSC) two of note were the Workplace Transport and Stress arrangements.
11. Much work has been ongoing to support the city's events Safety Advisory Group (SAG) in the work it has been doing in preparation for major events throughout the year taking into account critical public safety measures required.


12. During the period covered by this report 190 work related incidents were reported and the table below provides a break down by incident type. The results continue to indicate that aggression and violence is an issue as it has the largest number of incidents reported using the incident reporting system. This demonstrates that the work to encourage reporting is having a positive effect. It is also essential that such incidents are appropriately investigated in order to address the issues where this is practicable. The other largest causes were slips, trips and falls and handling, lifting and carrying. The number of reports by these two causes are consistent with the national data available from the Health and Safety Executive (HSE).

Aggression/Verbal Abuse	58
Handling/Lifting/Carrying	20
Slip/Trip/Fall	19
Impact with Stationary Object	9
Falling/moving/flying object	8

Next steps

13. If approved, the Health & Safety policy statement will be launched in January 2020 alongside a communication initiative with the aim promote a very positive health and safety culture across the organisation. This will involve active visible leadership from senior managers, a collaborative approach between all stakeholders and an encouragement at all levels to challenge poor health and safety practices but also escalate as appropriate significant health and safety concerns.
14. This will coincide with the launch of the Health & Safety IT system which will help to monitor the implementation of health and safety improvements and ensure actions are completed. This will empower the organisation to ensure a consistency of approach which will be essential to embed the positive health and safety culture to which CYC is committed.
15. Training materials for mandatory H&S training for all staff is to be reviewed in line with the policy, and the Council and Directorate H&S Plans will be reviewed in light of the priorities with a focus on H&S leadership and involvement of staff at all levels in H&S cultural change activities.

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	HEALTH & SAFETY POLICY Annex B	
	CYC HEALTH & SAFETY POLICY STATEMENT	
	Version: 7	Issue: December 2019
	Issued by: H&S Team	Section 2 Page: 1 of 1

CYC HEALTH & SAFETY POLICY STATEMENT

The council aims to provide a positive health and safety culture where all stakeholders are fully committed to health, safety and wellbeing. To achieve the council's aim this policy statement forms part of the council's wider agenda of social responsibility, sustainability, corporate governance, risk management and the delivery of quality services that provide value for money.

The council's commitments are to:

- Promote a positive approach to health, safety and wellbeing through encouraging active participation, by all stakeholders, in the elimination, where reasonably practicable, or active management of health, safety and wellbeing risk.
- Prevent injury and ill health associated with the council's activities and infrastructure.
- Satisfy, as a minimum, applicable legal requirements but aim, where reasonably practicable, to achieve best practice.
- Engage all stakeholders by implementing a joint approach and active involvement in the management of health, safety and wellbeing risk.
- Continually improve the council's safety management systems for example by simplifying these where practicable through the use of technological solutions.
- Set health and safety objectives, including a positive communication strategy, and monitor their achievement.
- Ensure that aggressive behaviour, both verbal and in writing (regardless of form), towards council staff and contractors working on the council's behalf will not be tolerated.
- Ensure accidents, incidents and near misses are appropriately reported, investigated and any learning points are acted upon to prevent recurrence.

I am committed to integrating health, safety and wellbeing into decision making and risk management processes within the council. The Corporate Directors will support me in this role and, together with the Corporate Leadership Group and Directorate Management Teams, will ensure the effective leadership of health, safety and wellbeing for the Council and others affected by the council's activities.

All stakeholders will have a joint approach to the management of health, safety and wellbeing to ensure that all significant risks are properly assessed, controlled and any measures implemented to mitigate risk are appropriately monitored. Those with management responsibilities are expected to consult with stakeholders to actively manage risk and everyone is expected to implement health, safety and wellbeing by positively challenging and/or escalating areas of concern.

The council will maintain positive arrangements to consult trade union representatives, employees, and others who may be affected by council activities, to encourage a joint approach to the management of health, safety and wellbeing.

The council expects all employees and those undertaking work on behalf of, or in partnership with, the council to take reasonable care of their own health and safety, for the health and safety of others and to co-operate with the council in the performance of its moral and statutory duties.



Ian Floyd, Acting Chief Executive

Date: TBC

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Annex C

Options Appraisal for the future Shared Health & Safety Service for North Yorkshire County Council and City of York Council

Background

Since December 2014, City of York Council (CYC) and North Yorkshire County Council (NYCC) have been sharing a Head of Health and Safety. This arrangement has worked well for both organisations. In June 2017 a formally constituted Shared Service was created with the members of CYC Health and Safety Team formerly transferring to NYCC through a TUPE transfer.

This arrangement has delivered a number of significant benefits for both councils including: greater resilience and capacity, increased flexibility to respond to changing priorities, improved efficiency and economies of scale, reduced reliance on key members of staff for service continuity and provided a greater opportunity to develop in-house specialist skills.

The Shared Service has been successfully operating for over 2.5 years and has continued to grow including additional work across CYC particularly on Construction, Design and Management and providing support during some quite critical times following some serious incidents and in some high potential impact situations such as the Shambles. In addition the trading element has substantially increased with the service acquiring two new councils; Ryedale and Richmondshire, training contracts and some one off projects such as the States of Jersey and University of Sheffield.

This demonstrates that the Shared Service arrangements have had positive benefits which justifies the need for continued collaboration. However the resources required, to provide the financial information necessary for both councils, in order to undertake their statutory due diligence has become increasingly unsustainable. This is due to the complexities in recognising each council's original client base and the new business being generated and the long term growth strategy for the constituent councils.

The Shared Service Project Board considered this and requested a short options paper for the future of the Shared Service.

The original business case covered a wide variety of options and consequently it was not considered necessary to undertake this work again but focus on 2 key options.

Option 1 Revise the agreement:

To revise the collaboration agreement and associated financial split so that any trading income is earned and grown by the host organisation i.e. NYCC. NYCC would then host the risks and rewards of trading, report on trading performance and enter and fulfil contracts outside of the agreement.

This simplifies the financial reporting arrangements. CYC can focus on delivery of its specific statutory requirements whilst having the benefits of a shared service for capacity and technical support. This would fund a core team of people with the ability to purchase additional resource if required all within a specific agreement.

The financial costs and service provided can be much more easily reported. CYC can then request reallocation of resources committed to growth and delivery to commercial clients to deliver services specifically required by CYC. The original customer base of CYC is already more complex (e.g. as schools in York are joining Academy Trusts operating over large geographical areas) so simply allocating customer base on geographic location is problematic.

Positives:

- Provides clear accountability.
- Simplifies financial and operational arrangements which would start to attract additional costs over time.
- Risks are hosted by those generating the risks ie NYCC.
- Allows service to continue to grow business so can maintain excellence and sustainability.
- This option also provides an opportunity to address other issues of confusion/complexity within the agreement eg insurance.

Negative:

- CYC lose the opportunity for growth but this is offset by mitigation of risk.

Option 2 Remain As Is:

The Shared Service has been successfully operating for 2.5 years and has continued to grow with additional work. This has offset some costs but it increasingly difficult to apportion costs and income in an appropriate manner within the staffing base and geographical boundaries not least with the creation of cross boundary multi-academy trusts. The complexity of accounting both in NYCC's trading 'arm' and in its accountancy team will attract fees in future for the services - £7k CYC - which will reduce the surplus.

Positives

- The service has successfully operated for 2.5 years and the funding has created a reserve from which the H&S IT system, pay awards and other CYC 'corporate H&S costs have been funded.
- The trading secures the sustainability of the service for the future, but this would be the same for both options.

Negatives

- Difficult (but not impossible) to monitor financially due to the organisations separate financial reporting mechanisms. This is currently absorbed by NYCC but will be at a cost in future
- This carries a risk – if income reduces the surplus reduces and potentially the resource base becomes unsustainable as the sharing applies to losses as well as any surplus.
- Collaboration agreement needs to be updated around complex insurance arrangements.

Recommended Option

Option 1 is considered to be the preferred option as it carries the least risk. It provides opportunities to deliver efficiencies through the maintenance of a coherent structure. This option also addresses the financial accounting arrangements as it relates in particular to trading. It allows for NYCC to continue to search for opportunities for growth by increasing funding sources through the provision of services to others on a commercial basis. The organisation creating the risk would host the risk. This approach is considered the most likely to deliver the significant benefits of collaboration.

In summary it offers the required long-term resilience and is most likely achieve the expected efficiencies and economies of scale as set out in the original business case.

DATED

2019

(1) NORTH YORKSHIRE COUNTY COUNCIL

(2) CITY OF YORK COUNCIL

(NEW) COLLABORATION AGREEMENT

Relating to: ~~Yor~~**Safety**

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

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SCHEDULE 1 SERVICES

SCHEDULE 2 PRINCIPLES OF COLLABORATION

SCHEDULE 3 COSTS AND SHARING

SCHEDULE 4 TUPE AND STAFF MANAGEMENT

SCHEDULE 5 DATA PROCESSING

DRAFT

THIS Agreement is dated

2019

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:

ADR	has the meaning given to it in clause 12.5;
Audit Act	means the Local Audit and Accountability Act 2014;
Authorised Representatives	means the persons referred to in clause 3.1;
Agreement	means this agreement together with the Schedules attached to it;
Client Group	has the meaning given in paragraph 2 of Schedule 1 to this Agreement;
Change	means an alteration to the Services and/or a variation to the terms of this Agreement;
Commencement Date	means 1 st April 2020;
Contracting Authority	has the meaning given to it in Part 1 of the Regulations;
Costs	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;
Data Controller	has the meaning set out in the Data Protection Act 2018;

Data Processor	has the meaning set out in the Data Protection Act 2018;
Data Protection Legislation	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);
DPA Principles	means those principles set out in the Data Protection Legislation
Directive	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;
Dispute	has the meaning given to it in clause 12.1;
EIR	means the Environmental Information Regulations 2014;
Equipment	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;
European Union Treaty Principles	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;
- (c) ~~NYCC incurring any liability while carrying out traded activities for third party organisations~~

FOIA

means the Freedom of Information Act 2000;

HSRM

~~means the Health and Safety Risk Management Service for NYCC;~~

HSWTHST HST

~~means the Health and Safety and Wellbeing~~ Team for CYC;

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;
Requesting Party	has the meaning given to it in clause 6.11.2;
Shared Head of Health and Safety	means the joint H Head of H Health and s Safety for NYCC and CYC;
Shared Health and Safety Team	means the merged team of health and safety staff (now employed by NYCC) which provide the Services to NYCC and CYC
Services	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;
Staff	means partners, directors, employees, agents and subcontractors of either Party in connection with the Agreement;
Term	means the period from the Commencement Date to expiry of this

Agreement in accordance with clause 10;

Traded Services

any Health and Safety advice and guidance provided by NYCC to third party organisations other than CYC

TUPE

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 167300, excluding public holidays; and

YorSafety

~~means the combined team of~~ HSWTHST and HSRM.

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 Risk Management Service 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 ~~Each Party~~ CYC shall be liable to pay such value added tax as may be properly chargeable ~~by the other Party~~ in respect of the delivery of the Services to it ~~a Party~~.

6.2.3 Invoices for the Costs shall be as described in Schedule 3 of this Agreement and **CYC** ~~each Party~~ 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 ~~or such third party subcontractor of either of them (as applicable)~~. 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 ~~or a third party subcontractor of either of them (as applicable)~~) to do so.

6.3.1 The Parties shall not be liable to each other ~~or any third party subcontractor of either of them (as applicable)~~ 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 third party subcontractor of either of them (as applicable)~~ 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 ~~and/or a third party subcontractor of either of them (as applicable)~~ 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 ~~or any third party subcontractor of either of them (as applicable)~~, each Party shall ensure that all such activities are completed and items made available in sufficient time to allow the other Party ~~or any third party subcontractor of either of them (as applicable)~~ 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 in relation to the Data Protection Act, 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 ~~in respect of each and every incident in relation to which a claim against it is made.~~

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 ~~in respect of each and every incident in relation to which a claim against it is made.~~

8.3 NYCC shall have in place and maintain professional indemnity insurance for the sum of £5 million pounds ~~in an amount for each and every claim, act or occurrence or series of claims~~ in the aggregate during the period of insurance, ~~acts or occurrences which is sufficient to cover its liabilities under this Agreement.~~

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 8.1 to 8.3 (inclusive).

8.5 ~~This clause 8 (in its entirety) shall also apply in relation to traded activities undertaken by NYCC and in respect of which NYCC will indemnify CYC against any claims.~~

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 Parties 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.

~~This shared liability will be split in accordance with financial contribution as outlined in clause 6.2 and Schedule 3 to this Agreement.~~

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 the total of the Costs payable under this Agreement.~~ **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 £1million.**

9.4 Subject to the provisions of clause **9.29.1**, 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, ~~which for the avoidance of doubt would be higher without such limitation of liability,~~ 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.

9.69.8 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.

(a)(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.

DRAFT

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

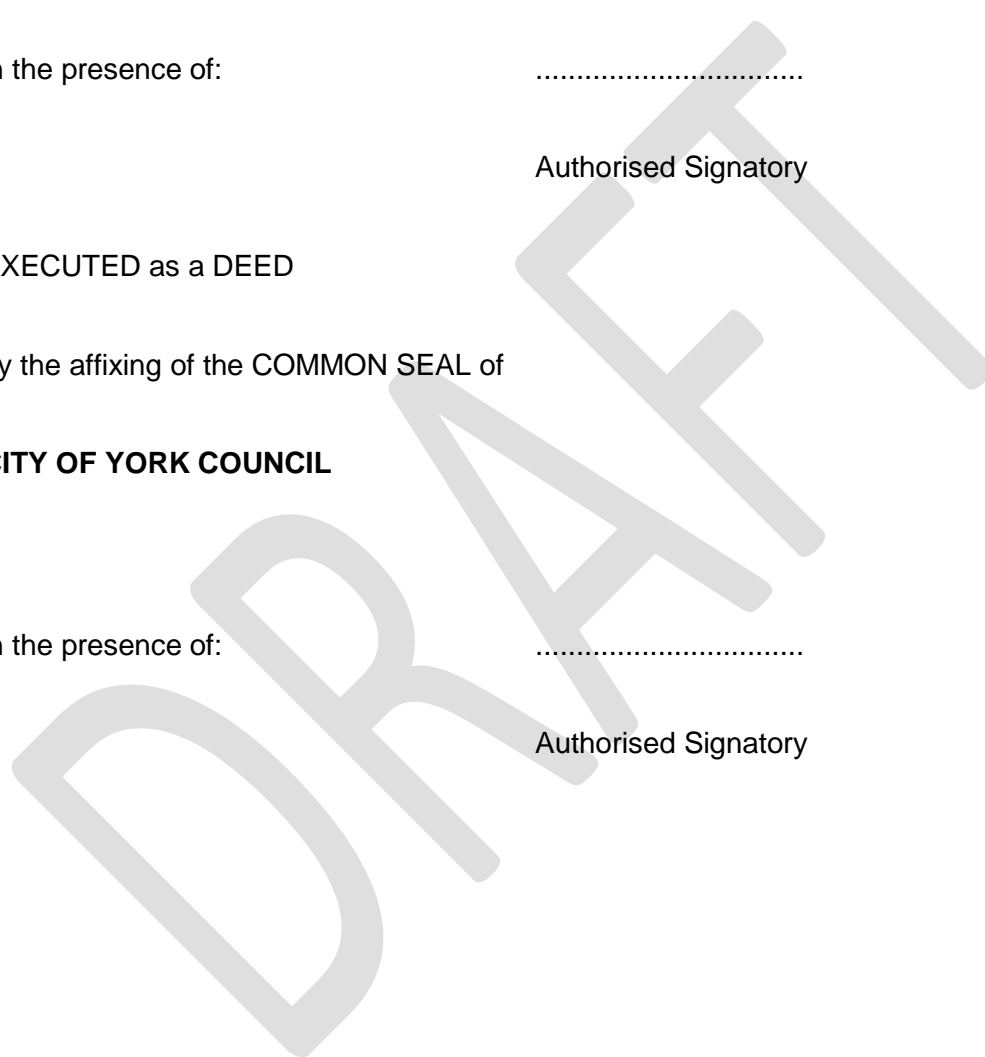
by the affixing of the COMMON SEAL of

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** ~~For Safety~~ 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 ~~For Safety~~ **NYCC** will provide to ~~NYCC and~~ 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** ~~Provide a traded service with schools and other customers~~
 - ~~xi.~~ ~~x.~~ ~~Educational Visits Authorisation and support~~
 - ~~xii.~~ ~~xi.~~ Advice to the CYC Safety Advisory Group (SAG) regarding Event Safety
 - ~~xiii.~~ ~~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 ~~For Safety~~, 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 1st May each year thereafter for the duration of the Term. ~~The invoiced figure shall take into account any income raised by CYC from external bodies but collected by NYCC.~~
- 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.
- 4.4 The ongoing and total cost of the Services will be monitored and agreed by the Client Group for the duration of the Term ~~and any on-going surpluses and deficits will be dealt with in accordance with the process as described in paragraph 2 of this Schedule 3 below.~~
- 1.5 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.

2. ~~Surplus/Under Recovery Share~~

~~Any surplus/loss generated from the recovery/under recovery of fees for the provision of the Services covered by this Agreement will be divided between the Parties in accordance with their respective cost contribution percentage.~~

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;

Relevant Employees	means those employees who are the subject of a Relevant Transfer;
Return Date	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;
Returning Employees	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;
Services Commencement Date	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;
Services Termination Date	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;
Terminated Service	means any or all of the Services which NYCC or any other relevant sub-contractor ceases to provide for whatever reason;
Transferee Admission Agreement	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);
Transferring Employee	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

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, the Supplier **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	<p>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).</p> <p>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>

<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>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).</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>Personal Data and Personal Sensitive Data will be processed:</p> <p>This will include the:</p> <ul style="list-style-type: none"> • name, date of birth, address and contact details of the subject of the accident, • details of the incident, and/or risk assessments including personal e.g. new and expectant mothers, young persons, individual etc. • Information of injuries and/or medical conditions and histories if appropriate. • Witness statements • Relevant correspondence/records (e.g. emails, risk assessments, previous incident reports); • Training and other similar records; • CCTV and /or photographs (including those of the relevant injury).

<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"> • Staff members from the relevant Data Controllers Organisations; • Members of the public 						
<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 2038"> <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>Accident/Incident Records including investigation reports and supporting documentation</p> </td> <td data-bbox="1015 1111 1385 1899"> <p>For 4 years or longer if necessary to be in accordance with particular statutory requirements depending upon the circumstances of the incident.</p> <p>For example :-</p> <p>-Children's information must be kept until their 21st birthday (or to their 25th 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 2038"> <p>Individual Risk Assessments</p> </td> <td data-bbox="1015 1899 1385 2038"> <p>In accordance with legal requirements depending upon circumstances.</p> </td> </tr> </tbody> </table>	Data held	Retention period	<p>Accident/Incident Records including investigation reports and supporting documentation</p>	<p>For 4 years or longer if necessary to be in accordance with particular statutory requirements depending upon the circumstances of the incident.</p> <p>For example :-</p> <p>-Children's information must be kept until their 21st birthday (or to their 25th 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>Individual Risk Assessments</p>	<p>In accordance with legal requirements depending upon circumstances.</p>
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<p>Individual Risk Assessments</p>	<p>In accordance with legal requirements depending upon circumstances.</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, or a third party of their choosing, upon termination of the agreement if requested.</p>		

DRAFT



16th December 2019

Executive Member for Finance & Performance

Report of Assistant Director, Customer & Digital Services

Approval of York Financial Assistance Scheme (YFAS) furniture & white goods contract with a whole life contract value of over £250k

Summary

- 1) This report presents the proposal to tender the York Financial Assistance Scheme (YFAS) furniture & white goods contract. This has been defined as a routine procurement as per the council's contract procedure rules and expenditure will fall within existing revenue budget provision. The decision-making route however is through the Executive member given the level of expenditure and required transparency around such procurements.

Recommendations

- 2) The Executive Member is asked to approve the tendering of the YFAS furniture & white goods contract as set out in Annex A

Reason: To ensure that councillors approve routine procurement decisions over £250k in value in line with procurement regulations and the public have the opportunity to see transparent decision-making in operation relating to major procurements.

Background

3) The contract procedure rules state:

7.7 Where the aggregate contract value (including any extension) is between £250,000 and less than £500,000 then the decision to enter the contract requires the approval of an Executive Member or the Executive unless the procurement is treated as Routine as defined in clause 7.9.

7.8 Where the aggregate contract value (including any extension) is £500,000 or more the decision will be regarded as a Key Decision unless the Chief Finance Officer acting in consultation with the Monitoring Officer has approved the procurement as Routine.

7.9 A Routine procurement is any arrangement that represents a low commercial and legal risk to the Council and relates to procurement of goods, services or works with a clearly defined specification and that clearly relate to the routine day to day operation of the Council. Routine procurements will be limited to items such as utilities, insurance or stationery. Where Officers consider a procurement process may be Routine, they are required to liaise with Commercial Procurement who will advise on the relevant paperwork to be submitted to the Chief Finance Officer. Authorisation to treat a procurement as Routine must be sought before the procurement process commences. A Director may enter a Contract where the procurement has been treated as Routine. An updated register of routine procurement must be presented regularly to the Executive Member for Finance and Performance.

4) It has been agreed for transparency that that whilst the procurement in Annex A has been agreed as routine by the Monitoring Officer and the Acting Section 151 Officer (Chief Finance Officer), and approved by the relevant Chief Officer each decision will be approved by the Executive Member for Finance and Performance rather than presented in a register.

5) Whilst in some cases the procurement route will be indicated in the annex, as a general rule the most appropriate procurement route will be used in line with professional procurement advice, as determined at the time the council is ready to issue the related specification.

Consultations

6) The effectiveness of the existing provision has been part of customer consultation and also discussion at both Financial Inclusion Steering Group (FISG) and with the council's third sector welfare providers. The current scheme has also been audited to ensure there is little vulnerability to fraud as had been the case with earlier cash based schemes.

Options/Analysis

- 7) Any options and analysis will be contained within the annexes.

Council Plan

- 8) Outcomes achieved by this contract support the Council Plan 2019 -23 priority of safer communities and culture for all in ensuring that residents can their families can continue to live within their communities.

Implications

- 9)
- a. **Financial:** There is an existing and ongoing budget for the YFAS scheme to support our residents.
 - b. **Human Resources (HR):** None
 - c. **Equalities:** None
 - d. **Legal:** None
 - e. **Crime and Disorder:** None
 - f. **Information Technology (ICT):** None
 - g. **Property:** None
 - h. **Other:** No known implications

Risk Management

- 10) There are no specific risks in relation to this report however the YFAS scheme helps to support residents to live within our communities which in turn reduces the effect of poverty and the demand on council services.

Contact Details Author:

David Walker
Head of Customer &
Exchequer Services

Chief Officers Responsible for the report:

Pauline Stuchfield
Assistant Director - Customer & Digital Services
Tel No. 01904 551706

Tel No. 01904 552261

Report Approved



Date 5/12/19

Specialist Implications Officer(s)

Financial: Debbie Mitchell, Corporate Finance & Commercial Procurement Manager
Legal: Suzan Harrington, Interim Assistant Director Legal & Governance

Wards Affected: *List wards or tick box to indicate all*

All



Background Papers:

None

List of abbreviations used in this report:

YFAS York Financial Assistance Scheme
FISG Financial Inclusion Steering Group

Annexes

Annex A - YFSA Furniture & White Goods Contract

YFSA Furniture & White Goods Contract**Introduction / Background:**

The Community Furniture Store (CFS) is the main provider of household goods for the York Financial Assistance Scheme (YFAS). The scheme, which is funded by City of York Council, provides basic furnishing for people in need as a result of a urgent personal circumstances.

CFS provides a range of good quality, affordable furniture. Electrical appliances are purchased new to meet the requirements of the scheme, as is a range of beds and bedroom furniture. CFS adds value-for-money to the scheme by offering people on the scheme the opportunity to also select from its range of pre-owned items such as sofas or bedroom furniture. Pre-owned items are donated to CFS and are made available at prices affordable to (almost) all. By selecting reused furniture alongside new appliances the Council can make smaller grants than would be the case if all of the furniture was bought new. People benefiting from the scheme also have a wider range of choice than would be the case if only new goods were available as this would tend to be a limited range. In practice the actual choice varies from day-to-day depending on what has been donated.

CFS also works with other local suppliers to provide goods and services through the scheme that it cannot directly offer. All installation is carried out by qualified electrical and heating engineers. Carpets and curtains are also bought to order from local suppliers and charged to the Council at cost under the scheme.

The council pay CFS directly for the procurement and installation/delivery of goods taking the requirement for vulnerable cash payments out of the system.

This scheme was originally introduced as a pilot as it was unique at the time in the broad range of what it can offer through a single main supplier. It also provides support to maintain the CFS for all residents and supports other local businesses.

The spend over recent years has been:

2018/19 - £191K

2017/18 - £149K

2016/17 - £171K

2015/16 - £158K

To comply with the Procurement Regulations and to ensure fairness and opportunity this contract now needs to be exposed to competition through a formal tender process for a new contract from 1st April 2020.