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**AGREEMENT FOR THE SAFE ACCOMMODATION FOR VICTIMS AND  
SURVIVORS OF DOMESTIC ABUSE SERVICE – LOT 1: WOMEN WITH  
CHILDREN.**

between

**LIVERPOOL CITY COUNCIL**

and

**LIVERPOOL YMCA**

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**THIS AGREEMENT** is dated

**PARTIES**

- (1) **Liverpool City Council** whose principal office is at Cunard Building, Water Street, L3 1DS (**Authority**).
- (2) **City of Liverpool Young Men’s Christian Association (Inc) Trading as YMCA Together** incorporated and registered in England and Wales with company number 0560870 whose registered office is at 15 Leeds Street, Liverpool, Merseyside, United Kingdom, L3 6HU (**Provider**).

**BACKGROUND**

- (A) The Authority placed a prior information notice ref: 2025/S 000-024336 in the e-notification service Find a Tender on 21<sup>st</sup> May 2025, seeking expressions of interest from potential providers for the provision of safe accommodation for victims and survivors of domestic abuse – Lot 1: Women with Children.
- (B) The Authority has, through a competitive process, selected the Provider to provide these services and the Provider is willing and able to provide the services in accordance with the terms and conditions of this Agreement.

**AGREED TERMS**

**1. DEFINITIONS AND INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**Achieved KPIs:** in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question.

**Applicable Law:** means all applicable laws, statutes, regulations, by-laws, orders, rules, guidance (whether statutory or non-statutory), directives, codes of practice, and other requirements of any relevant government or regulatory authority in force from time to time which are applicable to the provision of the Services and the performance of each Party’s obligations under this Agreement.

**Associated Company:** any holding company from time to time of the Provider and any subsidiary from time to time of the Provider, or any subsidiary of any such holding company.

**Authorised Representatives:** the persons respectively designated as such by the Authority and the Provider, the first such persons being set out in Schedule 1 (or where none are set out in the Schedule, such persons as the parties may designate and notify to each other for this purpose).

**Best Industry Practice:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the KPIs, the term, the pricing structure and any other relevant factors.

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Catastrophic Failure:**

- (a) a failure by the Provider for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster.
- (b) any action by the Provider, whether in relation to the Services and this Agreement or otherwise, which in the reasonable opinion of the Authority's Authorised Representative has or may cause significant harm to the reputation of the Authority.
- (c) The Authority becomes aware of any circumstances or evidence which reasonably indicates that the Provider or any member of the Provider's Personnel may pose a safeguarding risk to Service Users.

**Change:** any change to this Agreement including to any of the Services.

**Change Control Note:** the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

**Change Control Procedure:** the procedure for changing this Agreement, as set out in Schedule 6.

**Charges:** the charges which shall become due and payable by the Authority to the Provider in respect of the Services in accordance with the provisions of this Agreement, as such charges are set out in Schedule 3.

**Commencement Date:** 1<sup>st</sup> September 2025.

**Commercially Sensitive Information:** the information comprising the information of a commercially sensitive nature (as identified in the Provider's Tender or otherwise indicated as being confidential by the Provider) relating to the Provider, its intellectual property rights or its business or which the Provider has indicated to the Authority that, if disclosed by the Authority, would cause the Provider significant commercial disadvantage or material financial loss.

**Contract Year:** a period of 12 months, commencing on the Commencement Date.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and

the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

**Data Subject:** as defined in the Data Protection Legislation.

**Default Notice:** is defined in clause 5.2.

**Disaster:** an event defined as a disaster in the Disaster Recovery Plan.

**Disaster Recovery Plan:** the business continuity plan, provided within twelve weeks of the Commencement Date, which sets out the procedures to be adopted by the Provider in the event of a Disaster (including the procedures to be taken by the Provider in planning and providing for any such event), the Disaster Recovery Plan at the date of this Agreement being set out in Schedule 2.

**Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

**EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Exit Management Plan:** the plan set out in Schedule 7.

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure:** any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Provider, the Provider's Personnel or any other failure in the Provider's supply chain.

**Health and Safety Policy:** the health and safety policy of the Authority as provided to the Provider on or before the Commencement Date and as subsequently provided to the Provider from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with Applicable Law regarding health and safety.

**Information:** has the meaning given under section 84 of FOIA.

**Initial Term:** the period commencing on the Commencement Date and ending on the first anniversary of the Commencement Date.

**Insolvency Event:** where:

- (a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay

its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;

- (b) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- (g) the Provider (being an individual):
  - (i) is the subject of a bankruptcy petition or order;
  - (ii) dies; or
  - (iii) by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;
- (h) a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect

equivalent or similar to any of the events mentioned in (a) to (h) (inclusive); or

- (j) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**Intellectual Property:** any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other Intellectual Property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**Key Personnel:** those personnel identified in clause 16.2 (if any).

**Law:** any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Provider is bound to comply;

**Management Reports:** the reports to be prepared and presented by the Provider in accordance with clause 20 to include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service.

**Outcomes:** as defined in Schedule 1.

**Personal Data:** as defined in the Data Protection Legislation.

**Processor:** as defined in the Data Protection Legislation.

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;

- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation or common law concerning fraudulent acts;
  - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority.
- (d) any activity, practice or conduct which would constitute one of the offences listed under clause 1.1(c), if such activity, practice or conduct had been carried out in the UK.

**Provider's Personnel:** all employees, staff, other workers, agents and consultants of the Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**Provider's Tender:** the tender submitted by the Provider and other associated documentation set out in Schedule 2.

**Regulated Activity:** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Regulated Activity Provider:** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**Regulator of Social Housing:** means the public body responsible for regulating social housing providers in England.

**Relevant Transfer:** a relevant transfer for the purposes of TUPE.

**Remediation Notice:** a notice served by the Authority in accordance with clause 34.1(a).

**Replacement Services:** any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this Agreement, whether those services are provided by the Authority internally or by any Replacement Provider.

**Replacement Provider:** any third-party supplier of Replacement Services appointed by the Authority from time to time.

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

**Service User:** means the person (excluding the Authority or any Partner Organisations) directly receiving the Services provided by the Provider and includes their carer and legal guardian where appropriate.

**Services:** the services to be delivered by or on behalf of the Provider under this Agreement, as more particularly described in Schedule 1.

**Service Standards** means the services and units are to meet the requirements of section 57 of the Domestic Abuse Act 2021 for safe accommodation and support.

**Sub-Contract:** any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.

**Sub-Contractor:** the contractors or suppliers that enter into a Sub-Contract with the Provider.

**Target KPI:** the minimum level of performance for a KPI which is required by the Authority as set out against the relevant KPI in Schedule 1.

**Term:** the period of the Initial Term as may be varied by:

- (a) any extensions to this Agreement which are agreed pursuant to clause 3; or
- (b) the earlier termination of this Agreement in accordance with its terms.

**Termination Date:** the date of expiry or termination of this Agreement.

**Termination Payment Default:** shall refer to the Authority having failed to pay any undisputed Charges of at least £20,000, which have been overdue for payment for a period of 60 days or more.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

**VIM:** means Vendor Invoice Management, which is an online invoice processing software which manages invoices from receipt to payment.

**Working Day:** Monday to Friday, excluding any public holidays in England and Wales.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

- 1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 Unless the contrary is provided in any part of this Agreement, a reference to a statute or statutory provision is a reference to it as it is in force as at the Commencement Date.
- 1.9 A reference to **writing** or **written** includes e-mail but not facsimile.
- 1.10 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where any statement is qualified by the expression so far as the Provider is aware or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.14 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of this Agreement;
  - (b) Schedule 1 to this Agreement;
  - (c) the remaining schedules to this Agreement other than Schedule 2;

- (d) where this Agreement was entered into pursuant to a framework agreement (within the meaning of the Public Contracts Regulations 2015) the provisions of that framework agreement;
- (e) Schedule 2 to this Agreement.

## **COMMENCEMENT AND DURATION**

### **2. TERM**

This Agreement shall take effect on the Commencement Date and shall continue for the Term.

### **3. EXTENDING THE INITIAL TERM**

- 3.1 The Authority may, at its absolute discretion, extend this Agreement beyond the Initial Term by a further period or periods of up to two years (**Extension Period**). If the Authority wishes to extend this Agreement, it shall give the Provider at least 3 months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.2 If the Authority gives such notice, then the Term shall be extended by the period set out in the notice.
- 3.3 If the Authority does not wish to extend this Agreement beyond the Initial Term this Agreement shall expire on the expiry of the Initial Term and the provisions of clause 40 shall apply.

### **4. DUE DILIGENCE AND PROVIDER'S WARRANTY**

- 4.1 The Provider acknowledges and confirms that:
  - (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement;
  - (b) it has received all information requested by it from the Authority pursuant to clause 4.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Agreement;
  - (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 4.1(b);

- (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
  - (e) it has entered into this Agreement in reliance on its own due diligence.
- 4.2 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Provider by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.
- 4.3 The Provider:
- (a) as at the Commencement Date, warrants and represents that all information contained in the Provider's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and
  - (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.
- 4.4 The Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Provider in accordance with clause 4.3(b) save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Provider shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.5 Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

## **THE SERVICES**

## 5. SUPPLY OF SERVICES

- 5.1 The Provider shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this Agreement in accordance with the provisions of this Agreement.
- 5.2 In the event that the Provider does not comply with the provisions of clause 5.1 in any way, the Authority may serve the Provider with a notice in writing setting out the details of the Provider's default (a **Default Notice**).

## 6. OUTCOMES

- 6.1 Where any Service is stated in Schedule 1 to be subject to Outcomes, The Provider shall be expected to contribute to those Outcomes as detailed in that Schedule.

## 7. KPIS

- 7.1 Where any Service is stated in Schedule 1 to be subject to a specific KPI, the Provider shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than such specific Target KPI.
- 7.2 As existing Services are varied and new Services are added, Target KPIS for the same will be determined and included within Schedule 1.
- 7.3 The Provider shall provide records of and Management Reports summarising the Achieved KPIS as provided for in clause 20.

## 8. SERVICE STANDARDS

Without prejudice to clause 7, the Provider shall provide the Services, or procure that they are provided:

- (a) with reasonable skill and care and in accordance with the best practice prevailing in the Provider's industry from time to time;
- (b) in accordance with the Service Standards;
- (c) in all respects in accordance with the Authority's policies set out in Schedule 1; and
- (d) in accordance with all Applicable Laws.

## **9. ACCOMMODATION**

- 9.1 The standard of the accommodation provided as part of the Services shall at all times meet the requirements as determined by Part 4 of the Domestic Abuse Act 2021, the Domestic Abuse Support (Relevant Accommodation and Housing Benefit and Universal Credit Sanctuary Schemes)(Amendment) Regulations 2021 and the safe accommodation quality standards as set out in the Statutory Guidance for the Delivery of Support to Victims of Domestic Abuse in Domestic Abuse Safe Accommodation Services issued by the Department for Levelling up, Housing and Communities.

## **10. WITHHOLDING AND/OR DISCONTINUATION OF SERVICE**

- 10.1 Except where required by the Law, the Provider shall not be required to provide or to continue to provide Services to any Service User:
- (a) who in the reasonable professional opinion of the Provider is unsuitable to receive the relevant Service, for as long as such unsuitability remains;
  - (b) who displays abusive, violent or threatening behaviour unacceptable to the Provider (acting reasonably and taking into account the mental health of that Service User);
  - (c) in that Service User's domiciliary care setting or circumstances (as applicable) where that environment poses a level of risk to the Provider's Personnel engaged in the delivery of the relevant Service that the Provider reasonably considers to be unacceptable; or
  - (d) where expressly instructed not to do so by an emergency service provider who has authority to give such instruction, for so long as that instruction applies.
- 10.2 If the Provider proposes not to provide or to stop providing a Service to any Service User under clause 10.1:
- (a) where reasonably possible, the Provider must explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within 2 Working Days to the Service User and the Authority);
  - (b) the Provider must tell the Service User of the right to challenge the Provider's decision through the Provider's complaints procedure (or where applicable the Authority's complaints procedure) and how to do so;
  - (c) the Provider must inform the Authority in writing without delay and wherever possible in advance of taking such action; and

- (d) provided that nothing in this clause 10.2 entitles the Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.

## **11. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**

- 11.1 The provisions of this clause 11 are without prejudice to any other provisions of this Agreement.
- 11.2 Where a complaint is received by the Authority about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Agreement, then the Authority shall take reasonable steps to investigate the complaint. The Provider shall be obliged to engage and cooperate with the Authority in respect of any such investigation and shall comply with the findings and recommendations of the investigation.
- 11.3 If the Authority is of the reasonable opinion that there has been a breach of a material obligation under this Agreement by the Provider, then the Authority may, without prejudice to its rights under clause 34.1, do any of the following:
  - (a) without terminating the agreement, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Authority that the Provider will once more be able to supply all or such part of the Services in accordance with the Authority;
  - (b) without terminating the whole of the agreement, terminate the agreement in respect of part of the Services only (whereupon a corresponding reduction in the Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and
  - (c) charge the Provider for and the Provider shall pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

11.4 If the Provider fails to supply any of the Services in accordance with the provisions of this Agreement and such failure is capable of remedy, then the Authority shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 3 Working Days of the Authority's instructions or such other period of time as the Authority may direct.

11.5 If the Provider:

- (a) fails to comply with clause 11.4 above and the failure is materially adverse to the interests of the Authority or the Service User or prevents the Authority from discharging a statutory duty; or
- (b) persistently fails to comply with clause 11.4 above,

the Authority may terminate the Contract with immediate effect by giving the Provider notice in writing.

## **12. REGULATORY COMPLIANCE**

12.1 This clause 12 is without prejudice to clause 13.

12.2 The Provider must ensure that, prior to provision of the Services, it has obtained all necessary approvals and registrations with appropriate regulatory bodies such as the Regulator of Social Housing.

12.3 Where a regulatory body requires individual members of staff to be registered with them, the Provider must ensure that all staff who will be part of the provision of the Services are registered and otherwise compliant with the requirements of their regulatory body.

12.4 The Authority may terminate the Contract immediately without notice where it becomes aware that the Provider's status with a regulatory body has been suspended or terminated/withdrawn, or where the staff who are engaged in the provision of the Services have had their registration/approval from the appropriate regulatory body terminated/withdrawn or become subject to disciplinary action by the appropriate regulatory body.

12.5 The Provider shall ensure that in carrying out the Services, it affords the Authority such assistance as the Authority may reasonably require to fulfil its statutory duties as a local authority, including co-operating with investigations and referring suspicious activity to the Authority.

### 13. COMPLIANCE

- 13.1 The Provider shall ensure that all Necessary Consents and licences are in place to provide the Services, and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 13.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 13.3 The Provider shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
- (a) all Applicable Law regarding health and safety; and
  - (b) the Health and Safety Policy whilst at the Authority Premises.
- 13.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Provider shall instruct the Provider's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 13.5 Without limiting the general obligation set out in clause 8, the Provider shall (and shall procure that the Provider's Personnel shall):
- (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
    - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
    - (ii) the Authority's equality and diversity policy as provided to the Provider from time to time; and
    - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;
  - (b) at all times comply with the provisions of the Equality Act 2010 (as amended or replaced) and take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination

designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and

- (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement. The Provider shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

#### **14. DISASTER RECOVERY**

14.1 The Provider shall comply at all times with the relevant provisions of the Disaster Recovery Plan.

14.2 Following the declaration of a Disaster in respect of any of the Services, the Provider shall:

- (a) implement the Disaster Recovery Plan;
- (b) continue to provide the affected Services to the Authority in accordance with the Disaster Recovery Plan; and
- (c) restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

To the extent that the Provider complies fully with the provisions of this clause 14 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this Agreement on the part of the Provider), the KPIs to which the affected Services are to be provided during the continuation of the Disaster shall not be the KPIs as referred to in clause 7, but shall be the KPIs set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

#### **CHARGES AND PAYMENT**

##### **15. PAYMENT**

15.1 In consideration of the provision of the Services by the Provider in accordance with the terms and conditions of this Agreement, the Authority shall pay the Charges to the Provider in accordance with the provisions of Schedule 3.

15.2 The Provider shall invoice the Authority for payment of the Charges at the end of each calendar month or on such other date(s) as agreed with the Authority. All invoices shall be directed to the Authority's Authorised Representative. The Provider shall request payment from the Authority via VIM on a 4-weekly basis, in arrears.

- 15.3 Where the Provider submits an invoice to the Authority in accordance with clause 15.2, the Authority will consider and verify that invoice within 7 days.
- 15.4 The Authority shall pay the Provider any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 15.5 Where the Authority fails to comply with clause 15.3, the invoice shall be regarded as valid and undisputed 7 days after the date on which it is received by the Authority.
- 15.6 Where the Provider enters into a Sub-Contract, the Provider shall include in that Sub-Contract:
- (a) provisions having the same effect as clause 15.3 to clause 15.5 of this Agreement; and
  - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 15.3 to clause 15.5 of this Agreement.

In this clause 15.6, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

- 15.7 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 24. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 14 days after resolution of the dispute between the parties.
- 15.8 Subject to clause 15.7, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Provider shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this Agreement under clause 34.4 for failure to pay undisputed charges.
- 15.9 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Provider shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is

levied, demanded or assessed on the Authority at any time in respect of the Provider's failure to account for, or to pay, any VAT relating to payments made to the Provider under this Agreement.

- 15.10 The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this Agreement. Such records shall be retained for inspection by the Authority for 7 years from the end of the Contract Year to which the records relate.
- 15.11 The Authority may retain or set off any sums owed to it by the Provider which have fallen due and payable against any sums due to the Provider under this Agreement or any other agreement pursuant to which the Provider or any Associated Company of the Provider provides goods or services to the Authority.
- 15.12 If The Authority wishes to set off any amount owed by the Provider to the Authority against any amount due to the Provider pursuant to clause 15.11 it shall give notice to the Provider within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.
- 15.13 The Provider shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Provider.

## **STAFF**

### **16. KEY PERSONNEL**

- 16.1 Each party shall appoint the persons named as such in clause 16.2 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 16.2 The initial Key Personnel of each party shall be:-

- (a) For the **Provider**:-
- (b) Ellie McNeil, Chief Executive, [ellie.mcneil@ymcatgether.org.uk](mailto:ellie.mcneil@ymcatgether.org.uk)
- (c) For the **Authority**:-
  - (i) Maura Carr – Commissioning Manager,  
[Maura.Carr@liverpool.gov.uk](mailto:Maura.Carr@liverpool.gov.uk)

16.3 The Provider shall not remove or replace any of the Key Personnel unless:

- (a) requested to do so by the Authority;
- (b) the person is on long-term sick leave;
- (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
- (d) the person resigns from their employment with the Provider; or
- (e) the Provider obtains the prior written consent of the Authority.

16.4 The Provider shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within 10 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

16.5 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 7 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Provider or the Authority becoming aware of the role becoming vacant.

16.6 The Authority may require the Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

16.7 If the Provider replaces the Key Personnel as a consequence of this clause 16, the cost of effecting such replacement shall be borne by the Provider.

## 17. OTHER PERSONNEL USED TO PROVIDE THE SERVICES

17.1 At all times, the Provider shall ensure that:

- (a) each of the Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) each of the Provider's Personnel is expected to be compliant with the best practice guidance as supplied by The National Institute for Health and Care Excellence (NICE) (unless not applicable to the relevant person's job role or unless the Authority permits otherwise);
- (c) each of the Provider's Personnel engaged to directly provide smoking cessation support must be trained to the Level 2 competency standard of the National Centre for Smoking Cessation Training (NCSCT) as a minimum requirement (unless the Authority permits otherwise)
- (d) there is an adequate number of Provider's Personnel to provide the Services properly;
- (e) it does not use any Provider's Personnel who may represent a risk to any users of the Services or who have been identified as behaving inappropriately with users of the Services; and
- (f) only those people who are authorised by the Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services.

17.2 The Provider shall replace any of the Provider's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Provider's Personnel for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

17.3 The Provider shall maintain up-to-date personnel records on the Provider's Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Provider's Personnel. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

17.4 The Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

**18. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

- 18.1 The parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006
- 18.2 The Provider shall:
- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for Regulated Activity undertaken through the Disclosure and Barring Service (DBS); and
  - (b) monitor the level and validity of the checks under this clause 18.2 for each member of staff; and
  - (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.
- 18.3 The Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 18.4 The Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 18 have been met.
- 18.5 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service User, children and/or vulnerable adults.
- 18.6 The Provider shall develop their own safeguarding policies and procedures for individuals to adhere to, which shall, as a minimum comply, with the Authority's safeguarding policy and procedure, which may be found at <https://liverpool.gov.uk/council/strategies-plans-and-policies/children-and-families/safeguarding-childrens-procedure/>.

## **19. TUPE**

The parties agree that the provisions of Schedule 7 shall apply to any Relevant Transfer of staff under this Agreement.

## **CONTRACT MANAGEMENT**

### **20. REPORTING AND MEETINGS**

- 20.1 The Provider shall provide the Management Reports in the form and at the intervals set out in Schedule 1 (if any) or as specified by the Authority.
- 20.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 1 (if any) or, where none are set out such details as are communicated to the Provider by the Authority and the Provider shall, at each meeting, present its previously circulated Management Reports in the format set out in that Schedule.

### **21. MONITORING**

- 21.1 The Authority may monitor the performance of the Services by the Provider.
- 21.2 The Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 21.1 at no additional charge to the Authority.

### **22. COMPLAINTS**

- 22.1 Where the provision of the Services is made directly to Service Users for and on behalf of the Authority, then the Provider shall ensure that it has in place a comprehensive and effective complaints management procedure to receive, process and decide complaints from Service Users about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the agreement.
- 22.2 The Provider shall inform the Authority of all such complaints made by Service Users and the Authority shall be entitled, at its sole discretion, to intervene and investigate such a complaint itself, or alternatively to investigate the Provider's resolution of a complaint.

## 23. CHANGE CONTROL, BENCHMARKING AND CONTINUOUS IMPROVEMENT

- 23.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 23.2 The Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Provider shall identify and report to the Authority's Authorised Representative quarterly in the first Contract Year and once every six months for the remainder of the Term on:
- (a) the emergence of new and evolving relevant technologies which could improve the Services;
  - (b) new or potential improvements to the Services including the [quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
  - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and
  - (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.
- 23.3 Any potential Changes highlighted as a result of the Provider's reporting in accordance with clause 23.2 shall be addressed by the parties using the Change Control Procedure.

## 24. DISPUTE RESOLUTION

- 24.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
  - (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to the Authority's Chief Executive (or their nominated officer) and the Provider's Chief Executive Officer (or equivalent) who shall attempt in good faith to resolve it; and

- (c) if the Authority's Chief Executive (or their nominated officer) and the Provider's Chief Executive Officer (or equivalent) are for any reason unable to resolve the Dispute within 21 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 28 days after the date of the ADR notice.

24.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 50 which clause shall apply at all times.

## **25. SUB-CONTRACTING AND ASSIGNMENT**

25.1 Subject to clause 25.3, neither party shall assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other party, neither may the Provider sub-contract the whole or any part of its obligations under this Agreement except with the express prior written consent of the Authority such consent not to be unreasonably withheld.

25.2 In the event that the Provider enters into any Sub-Contract in connection with this Agreement it shall:

- (a) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.

25.3 The Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

25.4 Provided that the Authority has given prior written consent, the Provider shall be entitled to novate the agreement where:

- (a) the specific Change in contractor was provided for in the procurement process for the award of this Agreement; or
- (b) there has been a universal or partial succession into the position of the Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Agreement.

## **LIABILITY**

### **26. INDEMNITIES**

The Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this Agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or Sub-ontractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Agreement or Applicable Law by the Authority or its Representatives (excluding any Provider's Personnel).

### **27. LIABILITY**

27.1 Neither party shall be liable to the other party (as far as permitted by Law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

27.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement.

27.3 Notwithstanding any other provision of this Agreement neither party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any Applicable Law.

## 28. INSURANCE

28.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than five million pounds (£10,000,000) in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims;
- (c) professional indemnity insurance with a limit of indemnity of not less than two million pounds (£2,000,000) in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover.

### (the **Required Insurances**)

28.2 The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

28.3 The Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

28.4 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

28.5 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the agreement.

28.6 The Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

## INFORMATION

## **29. FREEDOM OF INFORMATION**

29.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Provider shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

29.2 The Provider acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Provider. The Authority shall take reasonable steps to notify the Provider of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **30. DATA PROTECTION**

30.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 30 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

30.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Provider is the Processor. Schedule 9 sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of Personal Data and the categories of Data Subject.

- 30.3 Without prejudice to the generality of clause 30.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this Agreement.
- 30.4 Without prejudice to the generality of clause 30.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this Agreement:
- (a) process that Personal Data only on the written instructions of the Authority unless the Provider is required by Domestic Law to otherwise process that Personal Data. Where the Provider is relying on Laws of a member of the European Union or European Union Law as the basis for processing Personal Data. Where the Provider is relying on Domestic Law the Provider shall promptly notify the Authority of this before performing the processing required by the Domestic Law unless those Domestic Law prohibits the Provider from so notifying the Authority;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
    - (i) the Authority or the Provider has provided appropriate safeguards in relation to the transfer;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;

- (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (iv) the Provider complies with reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (e) assist the Authority, at the Authority's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Authority without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Authority on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 30 and allow for audits by the Authority or the Authority's designated auditor.

30.5 Where the Provider appoints Sub-Contractor as a third party processor of Personal Data (which shall be subject to consent of the Authority as set out in clause 25), the Sub-Contract shall incorporate terms which are substantially similar to those set out in this clause 30. As between the Authority and the Provider, the Provider shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 30.

### **31. CONFIDENTIALITY**

31.1 Subject to clause 31.2, the parties shall keep confidential all matters relating to this Agreement (including, without prejudice to clause 30 any Data relating to Service Users) and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

31.2 Clause 31.1 shall not apply to any disclosure of information:

- (a) required by any Applicable Law, provided that clause 29.2 shall apply to any disclosures required under the FOIA or the EIRs;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Agreement;

- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 31.1 (unless the information concerned is Personal Data);
- (d) by the Authority of any document to which it is a party and which the parties to this Agreement have agreed contains no Commercially Sensitive Information;
- (e) to enable a determination to be made under clause 24;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Authority to any department, office or agency of central government; and
- (h) by the Authority relating to this Agreement and in respect of which the Provider has given its prior written consent to disclosure.

31.3 On or before the Termination Date the Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authority's employees, rate-payers or Service Users, are delivered up to the Authority or securely destroyed within 30 days of contract expiry or termination.

## **32. AUDIT**

- 32.1 During the Term and for a period of 7 years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:
- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;
  - (b) to review the integrity, confidentiality and security of any data relating to the Authority or any Service Users;
  - (c) to review the Provider's compliance with the DPA, the FOIA, in accordance with clause 30 (Data Protection) and clause 29 (Freedom of Information) and any other legislation applicable to the Services;
  - (d) to review any records created during, or for the purposes of, the provision of the Services;
  - (e) to review any books of account kept by the Provider in connection with the provision of the Services;
  - (f) to carry out the audit and certification of the Authority's accounts;

- (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; and
  - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this Agreement.
- 32.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 32 more than twice in any calendar year.
- 32.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- 32.4 Subject to the Authority's obligations of confidentiality, the Provider shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
  - (a) all information requested by the above persons within the permitted scope of the audit;
  - (b) reasonable access to any sites controlled by the Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - (c) access to the Provider's Personnel.
- 32.5 The Authority shall endeavour to (but is not obliged to) provide at least 10 days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 32.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by the Provider in which case the Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 32.7 If an audit identifies that:
  - (a) the Provider has failed to perform its obligations under this Agreement in any material manner, the parties shall agree and implement a remedial plan. If the Provider's failure relates to a failure to provide any information to the Authority about the Charges,

proposed Charges or the Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;

- (b) the Authority has overpaid any Charges, the Provider shall pay to the Authority the amount overpaid within 14 days. The Authority may deduct the relevant amount from the Charges if the Provider fails to make this payment; and
- (c) the Authority has underpaid any Charges, the Authority shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Provider in relation to invoicing within 14 days.

### **33. INTELLECTUAL PROPERTY**

33.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property created by the Provider or any employee, agent or subcontractor of the Provider:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Authority on creation.

33.2 The Provider shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

## **TERMINATION AND REMEDIES FOR BREACH**

### **34. TERMINATION FOR BREACH**

34.1 The Authority may terminate this Agreement in whole or part with immediate effect by the service of written notice on the Provider in the following circumstances:

- (a) if the Provider is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy, the Authority may only terminate this Agreement under this clause 34.1 if the Provider has failed to remedy such breach within 28 days of receipt of notice from the Authority (a **Remediation Notice**) to do so;
- (b) if the Provider loses any registration or accreditation which it is required by the Authority or by Law to have with a regulatory body;

- (c) if a Catastrophic Failure has occurred;
- (d) if there is an Insolvency Event;
- (e) if there is a change of control of the Provider within the meaning of section 1124 of the Corporation Tax Act 2010; and
- (f) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

34.2 The Authority may terminate this Agreement in accordance with the provisions of clause 36 and clause 37.

34.3 If this Agreement is terminated by the Authority for cause such termination shall be at no loss or cost to the Authority and the Provider hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.

34.4 The Provider may terminate this Agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, the Provider's notice to terminate this Agreement shall be deemed to have been withdrawn.

34.5 For the purposes of clause 34.1(a), a **material obligation** shall include, without limitation, any obligations set out in clauses 5 (Supply of services) 7 (KPIs), 8 (Service Standards), 9 (Accommodation), 10.2 (communication of withholding/discontinuing services), 12 (Regulatory compliance), 17 (Other personnel used to provide the Services), 18 (Safeguarding children and vulnerable adults), 20 (Reporting and meetings), 22 (Complaints), 25 (Sub-Contracting and assignment), 28 (Insurance) and 30.1 (Confidentiality).

### **35. TERMINATION ON NOTICE**

35.1 Without affecting any other right or remedy available to it, the Authority may terminate this Agreement at any time by giving 3 months' written notice to the Provider.

### **36. FORCE MAJEURE**

36.1 Subject to the remaining provisions of this clause 36, neither party to this Agreement shall be liable to the other for any delay or non-performance

of its obligations under this Agreement to the extent that such non-performance is due to a Force Majeure Event.

- 36.2 In the event that either party is delayed or prevented from performing its obligations under this Agreement by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
  - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
  - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 36.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 36.4 The Provider cannot claim relief if the Force Majeure Event is one where a reasonable supplier should have foreseen and provided for the cause in question.
- 36.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. Where the Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 36.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 36.7 The Authority may, during the continuance of any Force Majeure Event, terminate this Agreement by written notice to the Provider if a Force

Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 28 days.

### **37. PREVENTION OF BRIBERY**

37.1 The Provider represents and warrants that neither it, nor to the best of its knowledge any Provider's Personnel, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

37.2 The Provider shall not during the Term of this Agreement:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

37.3 The Provider shall during the Term of this Agreement:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause 37.3(a) and make such records available to the Authority on request.

37.4 The Provider shall immediately notify the Authority in writing if it becomes aware of any breach of clause 37.1 and/or clause 37.2, or has reason to believe that it has or any of the Provider's Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and

- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
  
- 37.5 If the Provider makes a notification to the Authority pursuant to clause 37.4, the Provider shall respond promptly to the Authority's enquiries, cooperate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with clause 32.
  
- 37.6 If the Provider is in Default under clause 37.1 and/or clause 37.2, the Authority may by notice:
  - (a) require the Provider to remove from performance of this Agreement any Provider's Personnel whose acts or omissions have caused the Default; or
  - (b) immediately terminate this Agreement.
  
- 37.7 Any notice served by the Authority under clause 37.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

### **38. ANTI-FACILITATION OF TAX EVASION**

- 38.1 The Provider shall:
  - (a) not engage in any activity, practice or conduct which would constitute either:
    - (i) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or
    - (ii) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;
  - (b) comply with the Authority's anti-bribery and anti-corruption policies and any relevant industry codes or policies pertaining to anti-corruption and anti-tax evasion, in each case as the Authority or the relevant industry body may update them from time to time;
  - (c) have and shall maintain in place throughout the Term of this Agreement such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including

without limitation employees of the Provider) and to ensure compliance with clause 38.1(a);

- (d) promptly report to the Authority any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017;
- (e) within 1 month of the date of this Agreement, and annually thereafter, certify to the Authority in writing signed by an officer of the Provider, compliance with this clause 38 by the Provider and all persons associated with it under clause 38.2. The Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.

38.2 The Provider shall ensure that any person associated with the Provider who is performing Services and/or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Provider in this clause 38 (**Relevant Terms**). The Provider shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the Authority for any breach by such persons of any of the Relevant Terms. For the purposes of this clause 38.2 a person associated with the Provider includes but is not limited to any subcontractor of the Provider.

38.3 Breach of this clause 38 shall be deemed a breach of a material obligation incapable of remedy under clause 34.1(a).

38.4 For the purposes of clause 38.1(c), the meaning of “policies and procedures as are both reasonable to prevent the facilitation of tax evasion” shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017.

### **39. EXIT MANAGEMENT**

39.1 The Provider shall within nine months of the Commencement Date provide to the Authority a draft Exit Management Plan, in accordance with the principles set out in Schedule 7.

39.2 The parties shall then co-operate in order to finalise the Exit Management Plan. Where the parties are unable to agree a final version of this initial Exit Management Plan, the Authority shall be entitled to make the final decisions in respect of any matter which cannot be agreed.

- 39.3 The Provider shall keep the Exit Management Plan under review throughout the duration of the Term (taking into account at all times the principles set out in Schedule 7) and shall within 3 months following the end of each Contract Year report to the Authority on any changes reasonably required to the Exit Management Plan in order to ensure the plan remains appropriate.
- 39.4 Either party may, at any time during the Term, propose amendments to the Exit Management Plan. If the proposals are accepted, the Provider shall prepare an updated Exit Management Plan incorporating the agreed amendments.

#### **40. CONSEQUENCES OF TERMINATION**

- 40.1 On the expiry of the Term or if this Agreement is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Provider shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Provider.
- 40.2 On termination of this Agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Provider shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Provider's Authorised Representative or Chief Executive Officer shall certify full compliance with this clause.
- 40.3 The provisions of clause 7.3 (provision of records), clause 26 (Indemnities), clause 28 (Insurance), clause 29 (Freedom of Information), clause 30 (Data Protection), clause 32 (Audit), clause 34 (Termination for Breach) and this clause 40 (Consequences of termination) shall survive termination or expiry of this Agreement.

#### **GENERAL PROVISIONS**

##### **41. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

#### **42. RIGHTS AND REMEDIES**

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law.

#### **43. SEVERABILITY**

43.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

43.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **44. PARTNERSHIP OR AGENCY**

44.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

44.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

#### **45. THIRD PARTY RIGHTS**

45.1 Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

45.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

## 46. PUBLICITY

The Provider shall not:

- (a) make any press announcements or publicise this Agreement or its contents in any way; or
- (b) use the Authority's name or logo in any promotion or marketing or announcement of orders,

except as required by Law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

## 47. NOTICES

47.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next Working Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by e-mail to its designated e-mail address.

47.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 11.00 am on the second Working Day after posting or at the time recorded by the delivery service (if earlier); or
- (c) if sent by e-mail, subject to clause 47.3, at 9.00 am on the next Working Day after transmission.

47.3 Where a party sends a notice or communication by e-mail, which returns an out of office or similar automatic response due to the recipient being unavailable for any reason, then that notice or communication must also be sent or delivered in accordance with clauses 47.2(a) or 47.2(b) (though the date and time of deemed service shall be taken as the date and time of transmission of the e-mail).

47.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include facsimile.

**48. ENTIRE AGREEMENT**

48.1 This Agreement, the schedules, and the documents annexed to it or otherwise referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

48.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

**49. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

**50. GOVERNING LAW**

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

**51. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

Signed by a duly authorised  
signatory for and on behalf of  
**Liverpool City Council**

*Trevor Ingham*  
Signed:.....

Trevor Ingham  
Name:.....

Signed by a duly authorised  
signatory for and on behalf of **City**  
**of Liverpool Young Men's**  
**Christian Association (Inc)**  
**Trading as YMCA Together**

*Ellie McNeil*  
Signed:.....

Ellie McNeil  
Name:.....

## Schedule 1 Specification



FINAL V1. Appendix B  
- Specification 25-26

## Schedule 2 Provider's Tender



Appendix E - Price  
Schedule\_ ALL Lots v2



Appendix F - Social  
Value Fair City Works



Appendix D -  
Submission Document

### Schedule 3

## Schedule 4 Performance Regime

### Part 1. Key performance indicators

#### 1. THE KPIS

1.1 The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Provider are contained in the below table.

SECTION 1: SERVICE PERFORMANCE							
<i>Consequences of non-achievement of target/s are outlined in section 11 of the service specification sub section 11.4.5</i>							
<i>The contract terms and conditions identifies further information regarding breaches.</i>							
Title	Critical Criteria	Measurement	Measurement Period	Target	Minor Breach	Serious Breach	Critical Indicator
<b>Service Responsiveness (referral response time)</b>	Referrals for safe accommodation  Referrals acknowledged and contact made within 24 hours	% score = total number of referrals acknowledged and contact made within 24 hours / total number of referrals x 100	Quarterly	95%	94-90%	<89%	No
<b>Service Acceptance</b>	Referrals for safe accommodation accepted	% score = total number of referrals accepted to the service / total number of referrals received x 100	Quarterly	95%	94-90%	<89%	Yes
<b>Service Delivery</b>	Safeguarding incidents – number of Safeguarding referrals made in accordance with the councils Safeguarding Adults procedures	% score = total number of incidents occurred and dealt with according to the Policy during the reporting period / total number of incidents	Quarterly	95%	90-94%	<89%	Yes

		occurred during the reporting period x 100					
<b>Service Delivery</b>	Timeliness of support planning  Full needs and Risk / Safety Assessment and safety plans completed within 7 working days	% score = total number of full needs and risk assessment completed within 7 working days / total number of full needs and risk assessments completed during the reporting period x 100	Quarterly	95%	94-90%	<89%	No
<b>Service Delivery</b>	Timeliness of support planning  Initial support plans completed within 7 working days	% score = total number initial support plans completed within 7 working days / total number of initial support plans completed during the reporting period x 100	Quarterly	95%	94-90%	<89%	No
<b>Service Delivery</b>	Support Plan Reviews  Support plan reviews completed monthly	% of Service Users who have had a monthly review of their support plan / total number of Service Users x 100	Quarterly	95%	94-90%	<89%	Yes
<b>Staffing Agency</b>	- The Provider will report on staffing levels, and whether they are covered by	% score = number of permanent staff / total number of staff in staffing	Quarterly	75%	74-65%	<64%	Yes

	permanent, relief/temporary or agency staff	structure x 100					
<b>Service Delivery (Incident reporting)</b>	Serious incidents reported within 24 hours of the incident occurring	% score = total number of serious incidents reported within 24 hours of incident occurring / total number of serious incidents x100	Quarterly	95%	90-94%	<89%	Yes
<b>Length of stay (LOS)</b>	The Provider will report on the number of Service Users who have moved on against the target LOS of 12 months	% score = total number of Service Users who have moved on after 12 months / total number of Service Users x 100	Quarterly	90%	89-80%	<79%	No
<b>Use of MainStay</b>	The Provider will provide a report of the number of Service Users moved on within the reporting period, and the reasons for service closure	% score = number of Service Users moved onto greater independence from the service during the reporting period / total number of service exits x 100	Quarterly	95%	90-94%	<89%	No
<b>Service User Feedback</b>	The Provider shall report on the Proportion of Service Users who provide feedback on their experiences of the service and	% score = total number of Service Users who engaged in giving feedback / total number of Service Users in	Quarterly	95%	90-94%	<89%	No

	overall results	service x 100					
	This can be captured as part of customer satisfaction surveys and individual Service User questionnaires / exit surveys						

1.2 There are a number of Key Performance Indicators (KPI's) and associated targets specific to this service which will also be used for contract monitoring purposes. The KPIs for each service are set out in the service specification for each service.

1.3 If the provider fails to reach the relevant KPI targets, or does not adhere to the specified timescales for submitting the KPI information set out in the specification, the Provider will be subject to performance improvement measures. In an instance such as this, contract monitoring meetings may be at an increased frequency and an appropriate action plan created to monitor ongoing performance.

1.4 In certain circumstances failure to meet performance targets may result in a temporary suspension where additional goods/Services may be put on hold until the concerns are addressed. This will be notified to the provider in writing when this occurs.

1.5 The Council has outlined a target / standard to be achieved for each of the performance measures. Where a target is not achieved then the Provider must set out the relevant factors or circumstances which contributed to the non-achievement in the quarterly performance monitoring information and these will be reviewed and discussed as part of the contract review process.

1.6 There are a number of performance measures which have a critical/minimum threshold:

- (a) In the event where a single KPI falls within parameters for 'minor' or 'serious' the Provider will be required to provide

evidence/reasons/actions taken and a discussion will be held with the Lead Commissioner.

- (b) If performance falls within the parameters for 'serious' on three consecutive occasions, then this will constitute a persistent unresolved breach of the Contract. The Council would expect the provider to provide a remediation plan to get performance back on track, this is outlined in the Contract Terms and Conditions.
- (c) Where it is deemed that the Provider persistently does not meet the expectations set out in the KPIs and/or any of the KPIs are perceived as frequently falling within the parameters of 'minor' or 'serious' (as outlined in the specification), this will constitute a persistent unresolved beach of the Contract. In this event, the Local Authority withhold the right to take action as identified in the Contract Terms and Conditions.

SECTION 2: CONTRACT PERFORMANCE							
<i>Consequences of non-achievement of target/s are outlined in section 11 of the service specification sub section 11.4.5</i>							
<i>The contract terms and conditions identifies further information regarding breaches.</i>							
Title	Critical Criteria	Measurement	Measurement Period	Target	Minor Breach	Serious Breach	Critical Indicator
<b>Performance Monitoring information</b>	Performance & Service Level Information reported within 3 weeks after the end of each reporting period.	Submission date within 3 weeks of the end of the reporting period  Number of incidence failure	Quarterly	4 per year	2 per year	≥3	No

## **Schedule 5 Charges and payment**

### **1. CALCULATION OF THE CHARGES**

- 1.1 The Charges for each year shall, subject to any adjustment in accordance with the provisions of this Agreement (including Schedule 1 and this Schedule 4) be based on the costs schedule submitted as part of the Provider's Tender and set out in Schedule 2.
- 1.2 During each Contract Year, the Authority shall pay the Charges to the Provider in 12 equal monthly payments in arrears and only on production by the Provider of an invoice for each payment.

## **Schedule 6 Change control**

### **2. GENERAL PRINCIPLES**

- 2.1 Where the Authority or the Provider sees a need to change this Agreement, the Authority may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 3 of this Schedule 6.
- 2.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Provider shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms before such Change.
- 2.3 Any discussions which may take place between the Authority and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 2.4 Any work undertaken by the Provider and the Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 6, shall be undertaken entirely at the expense and liability of the Provider.

### **3. PROCEDURE**

- 3.1 Discussion between the Authority and the Provider concerning a Change shall result in any one of the following:
- (a) no further action being taken; or
  - (b) a request to Change this Agreement by the Authority; or
  - (c) a recommendation to Change this Agreement by the Provider.
- 3.2 Where a written request for an amendment is received from the Authority, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Provider to the Authority within three weeks of the date of the request.
- 3.3 A recommendation to amend this Agreement by the Provider shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Provider at the time of such recommendation. The

Authority shall give its response to the Change Control Note within three weeks.

3.4 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this Agreement including:
  - (i) the timetable for the provision of the Change;
  - (ii) the personnel to be provided;
  - (iii) the Charges;
  - (iv) the Documentation to be provided;
  - (v) the training to be provided;
  - (vi) working arrangements;
  - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note;
- (j) provision for signature by the Authority and the Provider; and
- (k) details of how the costs that would be incurred by the parties if the Change subsequently results in the termination of this Agreement under clause 34.1(f) will be apportioned.

3.5 For each Change Control Note submitted by the Provider the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
  - (i) request further information;
  - (ii) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Provider; or

(iii) notify the Provider of the rejection of the Change Control Note.

3.6 A Change Control Note signed by the Authority and by the Provider shall constitute an amendment to this Agreement.

## Schedule 7 Exit

This Schedule sets out the minimum requirements and principles to be applied in relation to the preparation and review of the Exit Management Plan. Where an Exit Management Plan has not been prepared, the provisions of this Schedule shall be construed, for the purposes of the agreement, as the final Exit Management Plan.

### 4. INTERPRETATION

4.1 In addition to the definitions set out in clause 1, the following shall apply in respect of this Schedule:

**Assistance Period:** the period of 6 months from the Termination Date or such longer time period as the parties may agree.

**Authority Data:** all data, Personal Data and other information belonging or originating with the Authority and only held or processed by the Provider (or any of its Sub-Contractors) for or on behalf of the Authority in relation to the Services.

**Emergency Exit:** shall refer to termination of this Agreement pursuant to clauses 34 (Termination for breach), 35 (Termination on notice), 36 (Force Majeure), clause 37 (Prevention of bribery) or clause 38 (Anti-facilitation of tax evasion).

**Exit Manager:** the person appointed by each party pursuant to paragraph 5.3 of this Schedule to have responsibility over the implementation of the Exit Management Plan and managing any termination of this Agreement.

**Ordinary Exit:** shall refer to the termination of this Agreement by expiry of the Term.

**Services Assets:** the assets which are used in the provision of the Services (including Data held by the Provider which is not held on behalf of the Authority), whether or not such assets are leased by, owned or licensed to or in the possession or control of the Provider or its Sub-Contractors or the Authority.

### 5. PRINCIPLES

5.1 The principles to be applied and considered in respect of the drafting, review and carrying out of the Exit Management Plan shall be:-

- (a) The needs and well-being of the Service Users;
- (b) The effective transition of the Services (where applicable) to a Replacement Provider;
- (c) The parties shall co-operate and act in good faith throughout any termination of this Agreement;

- (d) The parties' exit from the agreement shall be undertaken in a manner which ensures minimal disruption to the parties, their staff and Service Users.
  
- 5.2 The Provider is required to ensure the orderly transition of the Services from the Provider to the Authority and/or any Replacement Provider in the event of termination (including partial termination) or expiry of this Agreement. This Schedule sets out the principles of the exit and service transfer arrangements that are intended to achieve such orderly transition and which shall form the basis of the Exit Management Plan. For the avoidance of doubt, the Provider shall be responsible for the overall management of the exit and service transfer arrangements.
  
- 5.3 Each party will appoint an Exit Manager and provide written notification of such appointment to the other party:
  - (a) In the case of expiry of the agreement, no less than 3 months prior to the expiry date; or
  - (b) In the case of early termination of the agreement in accordance with its terms, within 7 days of the Termination Date.
  
- 5.4 The Provider's Exit Manager will be responsible for ensuring that the Provider and the Provider's Personnel, its agents and Sub-Contractors comply with this Schedule. The Provider will ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Provider as are reasonably necessary to enable the Provider to comply with the requirements set out in this schedule. The parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each party's compliance with it.

## **6. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

- 6.1 Subject to paragraph 6.2 of this Schedule, on reasonable notice, the Provider shall provide to the Authority and/or (subject to the potential Replacement Provider entering into reasonable written confidentiality undertakings) to its potential Replacement Provider, the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Provider undertaking due diligence:
  - (a) details of the Services being provided;
  - (b) details of any assets or equipment used for the provision of the Services (including make, model and asset number) and details of their condition and physical location;

- (c) an inventory of the Authority Data in the Provider's possession or control;
- (d) all information relating to potential transferring employees required to be provided by the Provider under Schedule 8.

6.2 The Provider shall not be required to comply with the provisions of paragraph 6.1 before service of a notice to terminate this Agreement or in the period which is more than six months before the expiry of the Term.

## **7. MINIMUM REQUIREMENTS**

7.1 The Exit Management Plan will contain, as a minimum:

- (a) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Provider may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Provider of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to operate the Services;
- (b) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit; and
- (c) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit.

7.2 In addition, the Exit Management Plan shall:

- (a) document how the Services will transfer to the Authority and/or the Replacement Provider, including details of the processes, documentation, Data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Provider or its Sub-Contractors (where applicable);
- (b) specify the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in paragraph 9.1 below as are applicable) and detail how such services would be provided (if required), during the Assistance Period;
- (c) set out procedures to deal with requests made by the Authority and/or Replacement Provider for staffing information pursuant to Schedule 7 (TUPE);

- (d) address each of the issues set out in this schedule to facilitate the transition of the Services from the Provider to the Replacement Provider and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Assistance Period;
- (e) provide a timetable and identify critical issues for providing the Termination Services; and
- (f) set out the management structure to be put in place and employed during the Assistance Period.

## **8. ASSISTANCE PERIOD**

- 8.1 During the Assistance Period or such shorter period as the Authority may require, the Provider will continue to operate the Services (unless the Authority determines it does not require the Provider to do so) and will, at the request of the Council pursuant to paragraph 8.5, provide the Termination Services.
- 8.2 During the Assistance Period, the Provider will, in addition to operating the Services and providing the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or any Replacement Provider.
- 8.3 The continued operation of the Services during the Assistance Period and provision of any Termination Services shall continue to adhere to the KPIs (insofar as these remain relevant).
- 8.4 The parties acknowledge that the migration of the Services from the Provider to the Authority and/or its Replacement Provider may be phased, such that certain parts of the Services are handed over before others.
- 8.5 The Authority shall be entitled to require the provision of Termination Services by notifying the Provider in writing as soon as reasonably practicable. The notice requiring Termination Services shall specify the:
  - (a) date from which Termination Services are required;
  - (b) the nature of the Termination Services required; and
  - (c) the period during which it is anticipated that Termination Services will be required which shall continue no longer than 24 months after the date that the Provider ceases to operate the Services.

## 9. TERMINATION SERVICES - MEANING

9.1 The **Termination Services** to be provided by the Provider (either directly or through any Sub-Contractors) shall include, without limitation, such of the following services as the Authority may specify:

- (a) notifying the Sub-Contractors (if any) of procedures to be followed during the Assistance Period and providing management to ensure these procedures are followed;
- (b) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or Replacement Provider after the end of the Assistance Period;
- (c) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
- (d) with respect to work in progress as at the end of the Assistance Period, documenting the current status and stabilising for continuity during transition;
- (e) providing the Council with any problem logs which have not previously been provided to the Council;
- (f) providing assistance and expertise as necessary to examine all governance and reports in place for the operation of the Services and re-writing and implementing these during and for a period of 12 months after the Assistance Period;
- (g) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the operation of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Assistance Period;
- (h) reviewing all software packages and data-sets used in connection with the Services and providing details of these to the Authority and/or Replacement Provider;
- (i) making available to the Authority and/or Replacement Provider expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry. A documented plan is to be separately provided for this activity and agreed with the Authority at the time of termination or expiry;

- (j) the provision of an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- (k) answering all reasonable questions from the Authority and/or Replacement Provider regarding the Services;
- (l) agreeing with the Authority and/or Replacement Provider a plan for the migration of the Authority Data and all other information required for the operation of the Services to the Authority and/or Replacement Provider. The Provider will fully co-operate in the execution of the agreed plan, providing skills and expertise of a reasonably acceptable standard;
- (m) the provision of access to the Authority and/or Replacement Provider during the Assistance Period and for a period not exceeding six months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or Replacement Provider:
  - (i) to information and documentation relating to the Services that is in the possession or control of the Provider or its Sub-Contractors (and the Provider agrees and shall procure that its Sub-Contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
  - (ii) following reasonable notice and during the Provider's normal business hours, to members of the Provider's Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Provider or its Sub-Contractors.

## **10. KNOWLEDGE TRANSFER**

10.1 During the Assistance Period, the Provider will:

- (a) transfer all training material and provide appropriate training to those Authority and/or Replacement Provider staff responsible for internal training in connection with the operation of the Services;
- (b) provide for transfer to the Authority and/or Replacement Provider of all knowledge reasonably required for the operation of the Services which may, as appropriate, include information, records and documents; and
- (c) provide the Authority and/or Replacement Provider with access to such members of the Provider's Personnel or its Sub-Contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Provider or its Sub Contractors.

- 10.2 To facilitate the transfer of knowledge from the Provider to the Authority and/or Replacement Provider, the Provider shall provide a detailed explanation of the procedures and operations used to operate the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or Replacement Provider.
- 10.3 The information which the Provider shall provide to the Authority and/or Replacement Provider pursuant to paragraph 10.1 above will include:
- (a) copies of up-to-date procedures and operations manuals;
  - (b) product information;
  - (c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or Replacement Provider;
  - (d) key support contact details for third party suppliers' personnel under contracts which are to be assigned or novated to the Authority and/or Replacement Provider pursuant to this Schedule;
  - (e) information regarding any unresolved faults in progress or disputes at the commencement of the Assistance Period as well as those expected to be in progress at the end of the Assistance Period; and
  - (f) details of physical and logical security processes and tools which will be available to the Authority and/or Replacement Provider,
- 10.4 During the Assistance Period the Provider shall grant any agent or personnel (including employees, consultants and Providers) of the Authority and/or Replacement Provider access, during business hours and upon reasonable prior written notice, to any of the Provider's premises and/or sites for the purpose of effecting a prompt knowledge transfer provided that any such agent or personnel (including employees, consultants and suppliers) having access to any such premises and/or sites under this paragraph shall sign a confidentiality undertaking in favour of the Provider (in such form as the Provider shall reasonably require).

## Schedule 8 TUPE

### 1. INTERPRETATION

For the purposes of this Schedule 7, in addition to the definitions at clause 1 of this Agreement, the following definitions apply:

**Administering Authority:** the relevant authority responsible for managing and administering the LGPS within the meaning of the LGPS Regulations.

**Admission Agreement:** the agreement to be entered into in accordance with regulation 3 of the LGPS Regulations by the Administering Authority, the Authority and the Provider or Sub-Contractor, as appropriate in the Administering Authority's standard form.

**Appropriate Pension Provision:** in respect of Eligible Employees, either:

- (a) membership, continued membership or continued eligibility for membership of their Legacy Scheme; or
- (b) membership or eligibility for membership of a pension scheme, which is certified by the Government Actuary's Department (**GAD**) as being broadly comparable to the terms of their Legacy Scheme.

**Bond:** the bond to be executed in the Admission Authority's standard form (for a value to be agreed) under paragraph 5.4.

**Eligible Employees:** the Transferring Former Provider Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Service Transfer Date.

**Former Provider:** the supplier supplying services to the Authority before the Service Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor).

**Legacy Scheme:** the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to become a member of, prior to the Relevant Transfer.

**LGPS:** the Local Government Pension Scheme.

**LGPS Regulations:** the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) as amended or replaced from time to time.

**New Provider:** another party chosen by the Authority to take over the provision of all or part of the Services.

**Returning Employees:** those persons listed in a Schedule to be agreed by the parties prior to the Subsequent Transfer Date who it is agreed were employed by the Provider wholly and/or mainly in the Services immediately before the Subsequent Transfer Date.

**Service Transfer Date:** means the date on which provision of the Services by the Provider commences, or such alternative date (for the purposes of transfer of employees) as may be agreed between the Provider and the Former Provider.

**Subsequent Transfer Date:** means the date or dates on which there is a transfer of responsibility for the provision of the Services or part of the Services between the Provider and the Authority and/or a New Provider (as the case may be).

**Transferring Former Provider Employees:** those employees of the Former Provider and/or that Provider's Sub-Contractors to whom TUPE will apply on the Service Transfer Date.

## **2. TRANSFER OF EMPLOYEES FROM CURRENT SERVICE PROVIDER**

- 2.1. This paragraph 2 shall apply where the Services, or services which are substantially the same as the Services, are being provided by the Authority or another supplier on behalf of the Authority, immediately prior (or within a reasonable period prior) to the Commencement Date.
- 2.2. The Provider shall ensure that prior to the Service Transfer Date, it has established whether the provisions of TUPE will apply to the provision of the Services and if that is the case, the Provider shall take such steps as are necessary under TUPE to facilitate the transfer of any Transferring Former Provider Employees.
- 2.3. The Provider shall comply with all requirements of TUPE in respect of the transfer of the Transferring Former Provider Employees and shall use its best endeavours to ensure minimal disruption in service provision. In complying with this paragraph, the Provider must ensure that it undertakes all relevant consultation and communication with the Former Provider in order to ensure that any and all transfers of employees under TUPE are undertaken in accordance with TUPE.

## **3. POST-TERMINATION OF CONTRACT**

- 3.1. The Parties acknowledge and agree that where all or part of the Services cease to be provided by the Provider for any reason and where all or part of the Services continue to be provided by the Authority and/or a New Provider, there may be a Relevant Transfer of the Returning Employees to the

Authority and/or the New Provider for the purposes of TUPE. If there is such a transfer, the employment of the Returning Employees shall transfer to the Authority and/or the New Provider in accordance with TUPE with effect from the Subsequent Transfer Date.

- 3.2. Save where the Parties reasonably believe that there will be no Relevant Transfer for the purposes of TUPE, the Parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the Authority and/or the New Provider.
- 3.3. The Provider shall not later than six months prior to the expiry of this Agreement (or, if earlier, within 28 days of notice being given of termination of this Agreement) to the extent lawfully permitted provide the Authority with the following details:
  - 3.3.1.a list of those personnel engaged in the Services (**Potential Returning Employees**);
  - 3.3.2.job title, age, length of continuous services, current remuneration, benefits, and notice periods of the Potential Returning Employees;
  - 3.3.3.terms and conditions of employment of the Potential Returning Employees, including any particulars that the Provider is obliged to give under section 1 of the Employment Rights Act 1996;
  - 3.3.4.any current disciplinary or grievance proceedings ongoing in respect of the Potential Returning Employees and any such proceedings in the preceding two years;
  - 3.3.5.any claims, current or which the Provider has reasonable grounds to believe will be brought by the Potential Returning Employees or their representatives or which have been brought in the preceding two years;
  - 3.3.6.all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Potential Returning Employees;
  - 3.3.7.information on any collective agreements which will have effect in relation to the Potential Returning Employees after the Subsequent Transfer Date pursuant to TUPE.
- 3.4. The Provider shall provide updates of the details listed above at regular intervals to be specified by the Authority.
- 3.5. The Provider shall indemnify the Authority (both for itself and a New Provider) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Authority and/or a New Provider in connection with or as a result of:

3.5.1.any claim or demand by any Returning Employee or a trade union or other body or person representing a Returning Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) arising from any act, fault or omission of the Provider on or before the Subsequent Transfer Date;

3.5.2.any failure by the Provider to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE, save where such failure arises from the failure of the Authority and/or New Provider to comply with its or their duties under regulation 13 of TUPE;

3.5.3.a claim by any person who transfers or alleges that they have transferred to the Authority or the New Provider but whose name is not included in the list of Returning Employees.

#### **4. PENSIONS**

4.1. The Provider shall, or shall procure that any relevant Sub-Contractor shall, ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Service Transfer Date.

4.2. The provisions of paragraph 4, paragraph 5 and paragraph 6 shall be directly enforceable by an affected employee against the Provider or any relevant Sub-Contractor and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Provider or Sub-Contractor under those paragraphs in his own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.

#### **5. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME**

5.1. Where the Provider or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Provider shall or shall procure that it and/or each relevant Sub-Contractor shall enter into an Admission Agreement to have effect from and including the Service Transfer Date or, if the Relevant Transfer occurs after the Service Transfer Date, from and including the date of that Relevant Transfer.

5.2. For the purposes of calculating the employer's contribution rate, any termination payment, and any other sums due to the Administering Authority under the Admission Agreement, the Authority shall ensure that the Eligible Employees' past service benefits accrued prior to the Service Transfer Date are fully funded as at the Service Transfer Date, as determined by the Fund's actuary.

- 5.3. The Provider shall indemnify and keep indemnified the Authority and/or any Replacement Provider and, in each case, their sub-contractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Provider or Sub-Contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Agreement.
- 5.4. The Provider shall and shall procure that it and any Sub-Contractor shall prior to the Service Transfer Date or, if the Relevant Transfer occurs after the Service Transfer Date, from and including the date of that Relevant Transfer, obtain any indemnity or Bond required in accordance with the Admission Agreement.
- 5.5. The Provider shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority. The Provider shall be responsible for meeting all costs associated with the award of such benefits.

## **6. PROVIDER PENSION SCHEME**

- 6.1. Where the Provider or Sub-Contractor does not wish to or is otherwise prevented from offering the Eligible Employees membership or continued membership of the LGPS, the Provider shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Service Transfer Date or, if the Relevant Transfer occurs after the Service Transfer Date, from and including the date of that Relevant Transfer. Such an occupational pension scheme must be:

- 6.1.1. established no later than one month prior to the date of the Relevant Transfer; and

- 6.1.2. certified by the GAD as providing benefits that are broadly comparable to those provided by the Legacy Scheme,

and the Provider shall produce evidence of compliance with this paragraph 6 to the Authority prior to the date of the Relevant Transfer.

- 6.2. The Authority's actuary shall determine the terms for bulk transfers from the LGPS to the Provider's scheme following the Service Transfer Date and any subsequent bulk transfers on termination or expiry of this Agreement.

- 6.3. The Provider shall and shall procure that each relevant Sub-Contractor shall:

- 6.3.1. maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);
- 6.3.2. promptly provide to the Authority such documents and information mentioned in paragraph 6.3(a) which the Authority may reasonably request in advance of the expiry or termination of this Agreement; and
- 6.3.3. fully cooperate (and procure that the trustees of the Provider's scheme shall fully cooperate) with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services on expiry or termination of the Agreement.

## Schedule 9 Data Processing

1. The Provider shall comply with any further written instructions with respect of processing by the Authority.
2. Any such further instructions shall be incorporated into this Schedule.

3. **Data Protection Officer:**

The details of the parties' respective Data Protection Officers (or equivalent) are:

- 3.1 The Authority: Paul Mountford, Senior Information Officer – DPO@liverpool.gov.uk
- 3.2 The Provider: Bernard Seymour, Bernard@regulatorysolution.co.uk  
Regulatory Solution Ltd

4. **Processing by the Provider**

- 4.1 **Scope** = Individual client details (name, address, known risk factors for serious violence experience and demographical data)
- 4.2 **Nature:** Data Collection will be via automated means. Once a referral is made, the data will be processed by the Authority and shared with the provider. A case file will be opened on the Authority's system(s) for collection, recording, organising, consulting upon, and storing of outcomes and case notes for the Authority's Adults and Children's Service records. These records will be held on Council secure servers for a period of 5 to 10 years (depending on the age of the client on receipt of intervention) to enable the tracking of longer term outcomes. Anonymised records will be made available to third party evaluators to monitor the success of interventions. Where necessary for safeguarding purposes, records may be shared with partner agencies. This will be at the discretion of the Authority's Commissioning & Contract Manger(s). In line with GDPR, the service user will have the right to rectification erasure, and processing restrictions at any point. Details of how to request this can be found on the Adults and Children's Services Privacy Notices on LCC website
- 4.3 **Purpose of processing:** The provider, acting on the instructions of Liverpool Adults and Children's Services as the Data Controller and with the informed

consent of the data subject will record information defined as personal sensitive/special category data. Each data subject's information will be contained in a unique file and made available to both the data controller and data subject if required. This information will be subject to quality and assurance measures to ensure contractual compliance.

**4.4 Duration of the processing:** The term for this agreement

**4.5 Types of Personal Data:** Name, address, date of birth, telephone number, educational information, criminal/youth offending record, mental health record (where available/applicable), parental information, social care status.

**4.6 Categories of Data Subject:** Staff of the service provider, staff of the authority, clients, and family of clients.



## Envelope Data

Subject: DN771595: Safe Accommodation for Victims and Survivors of Domestic Abuse (x3 Lots)  
Documents: Safe Accommodation Contract Terms and Conditions\_2025 v2\_Men with Children.pdf, Safe Accommodation Contract Terms and Conditions\_2025 v2\_Women with Children.pdf, Safe Accommodation Contract Terms and Conditions\_2025 v3\_Single Women with no Children.pdf  
Document Hash: INFSDxTkV4Nq/vZQvfNRcuuvMFEKUR5/e5a6JptBRm4=  
Envelope ID: ENV34458144-2515-DFCA-4678-FBDA  
Sender: Marlon Roy  
Sent: 27/08/2025 13:42 PM GDT  
Status: Completed  
Status Date: 01/09/2025 10:21 AM GDT  
Access Authentication: None  
Email Access Code: Not Enabled  
Email Verification: Not Enabled

## Recipients / Roles

Name / Role	Email	Type
Marlon Roy	marlon.roy@liverpool.gov.uk	Sender
Ellie McNeil	Ellie.McNeil@ymcattogether.org.uk	Signer
Trevor Ingham	Trevor.Ingham@liverpool.gov.uk	Signer
marlon roy	marlon.roy@liverpool.gov.uk	Signer
Maura Carr	maura.carr@liverpool.gov.uk	Cc - Unsigned and Signed

## Document Events

Name / Roles	Email	IP Address	Date	Event
Marlon Roy	marlon.roy@liverpool.gov.uk	10.8.27.52	27/08/2025 13:42 PM GDT	Created
Ellie McNeil	Ellie.McNeil@ymcattogether.org.uk	2.124.172.98	27/08/2025 19:24 PM GDT	Finish Later
Ellie McNeil	Ellie.McNeil@ymcattogether.org.uk		30/08/2025 06:07 AM GDT	Reminder
Ellie McNeil	Ellie.McNeil@ymcattogether.org.uk	2.124.172.98	30/08/2025 08:38 AM GDT	Signed
Trevor Ingham	Trevor.Ingham@liverpool.gov.uk	10.8.27.52	01/09/2025 09:23 AM GDT	Signed
marlon roy	marlon.roy@liverpool.gov.uk	85.210.240.70	01/09/2025 10:21 AM GDT	Signed
			01/09/2025 10:21 AM GDT	Status - Completed

## Carbon Copy Events

Name / Roles	Email	Sent
Maura Carr	maura.carr@liverpool.gov.uk	01/09/2025 10:21 AM GDT

## Signer Signatures

Signer Name / Roles	Signature	Initials
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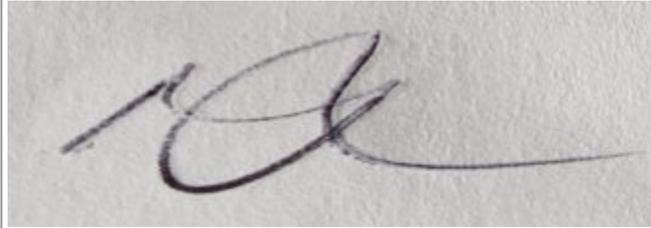
Ellie McNeil

Ellie McNeil

Trevor Ingham

Trevor Ingham

marlon roy

A photograph of a handwritten signature in dark ink on a light-colored, textured surface. The signature is highly stylized and cursive, appearing to be 'MR' followed by a long, sweeping horizontal stroke.