

Appendix 3

3 Intellectual Property Rights

3.1 Definitions

“Background Intellectual Property”

Any Intellectual Property, other than Foreground Intellectual Property, which is used in performing the Services or comprises part of the Work.

“Confidential Information”

Includes all designs, drawings, data, specifications and all other technical business and similar information relating to the Services including all readable or computer or other machine readable data or material and any material relating to or comprising software which may be part of the provision of the Services;

“Foreground Intellectual Property”

Is any Intellectual Property that arises or is obtained or developed by, or on behalf of, The College in respect of the Work in the course of or in connection with the provision of the Services.

“Intellectual Property”

Is any patent, registered design, copyright, database right, design right, topography right, trade mark, trade name, application to register any of the aforementioned rights, trade secret, inventions, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world including, without limitation:

- (a) any renewals, revisions and extensions created or provided by the laws of any country;
- (b) all rights of action and remedies (including but not limited to an injunction, damages and/or an account of profits) in relation to past infringements; and
- (c) the right to apply for registration of any such rights in any country of the world;

“Work”

Means all materials created by The College as a result of the provision of the Services including Confidential Information.

- 3.2 In consideration of The COUNCIL making the payments set out in Annex 1 of Appendix 2 to The College in connection with the Services The College hereby grants (and, where relevant, shall procure from any necessary third parties the grant) to The COUNCIL a non-exclusive, irrevocable, worldwide, royalty-free

licence (with the right to license others) of any of The College's Foreground Intellectual Property that The COUNCIL may reasonably require to be able fully to exploit, develop and commercialise the results of the Services, including, without limitation, the Work.

- 3.3 The provisions of this Clause shall apply during the continuance of this Financial Memorandum and after its termination howsoever arising

4 Disposal of Assets and Change of Use

- 4.1 In respect of Assets whose value exceeds £2,500 including VAT the following provisions shall apply.

- 4.2 For the purposes of this section:

- 4.2.1 'Asset' shall mean any property, real or personal, tangible or intangible;

an Asset shall be considered to have been financed by The COUNCIL if it has been acquired wholly or partly with funds provided by The COUNCIL

- 4.2.2 the use of any Asset shall be considered to have changed if The College uses it for any purpose other than for the provision or connected with the provision of Services under the Contract;

- 4.2.3 'the appropriate proportion thereof' shall be the proportion represented by the amount of funding provided by The COUNCIL to acquire, develop or improve an asset in relation to the entire price paid for its acquisition, or its market value when its development or improvement have been completed.

- 4.3 The College shall ensure that any Asset financed by The COUNCIL is adequately insured.

- 4.4 The College shall inform The COUNCIL if it proposes to dispose of, or change the use of, any Asset that has been financed by The COUNCIL.

- 4.5 The College shall not dispose of any Asset financed by monies provided by The COUNCIL unless it has first obtained the written consent of The COUNCIL to such a disposal.

- 4.6 Where The College disposes of the Asset it shall pay to The COUNCIL whichever is the greater either the amount of funding provided by The COUNCIL in respect of the Asset or the net proceeds of any disposal of an Asset, or the appropriate proportion thereof, to The COUNCIL unless otherwise agreed with The COUNCIL.

- 4.7 If The College changes the use of any such Asset it will be treated as a disposal and The College shall make a payment to The COUNCIL in accordance with clause 4.6 above.

- 4.8 In the event of The College being taken over, merging or going into liquidation, all Assets financed by The COUNCIL, or the equivalent portion of their market value, will become the property of The COUNCIL.
- 4.9 The provisions of this clause shall apply during the continuance of this Financial Memorandum and after its termination howsoever arising. The COUNCIL shall reserve the right to decide when its interest in Assets financed by The COUNCIL under the terms of The CONTRACT shall cease.

5 Information, Advice and Guidance

- 5.1 As part of the delivery of the Services, The College will have to provide high quality and easily accessible information and advice in helping learners to understand the opportunities and support available to them about education, training or connected matters (including employment).
- 5.1.1 Where one of the main objectives of the Services to be provided under this Financial Memorandum is to deliver information and advice, The College will have to have or attain the matrix Standard accreditation within six months of the Financial Memorandum being awarded; and
- 5.1.2 If the information and advice is embedded as part of the delivery of the Services, The College should work towards achieving the matrix Standard Accreditation within a reasonable period.

6 Transfer of Undertakings (Protection Of Employment) Regulations 2006 and Pensions Aspects

6.1 Definitions

- 6.1.1 "Admission Agreement" means an agreement between the COUNCIL and College and a Public Sector Pension Scheme, so that each Transferring Employee may continue to participate in that employee's respective Public Sector Pension Scheme, after the Employee Transfer Date;
- 6.1.2 "Employee Transfer Date" means in respect of any particular Transferring Employee the date on which the part of the Services to which they are assigned transfers from the Previous College to the College
- 6.1.3 "Final Pay Details" means the information set out in Annex D;
- 6.1.4 "Future Transfer Date" means the date of termination or expiry of this Contract;
- 6.1.5 "Future Transferring Employees" means those employees of the College who are at the Future Transfer Date employed under a contract of service or apprenticeship or otherwise in the relevant part of the undertaking which transfers on the termination or expiry of this Financial Memorandum pursuant to TUPE or the Acquired Rights

Directive 187/77/EC or otherwise to any Successor College;

6.1.6 “Initial Staff Information” means the information set out in Annex A;

6.1.7 “Original Transfer Date” means [];

6.1.8 “Prescribed Particulars” means in respect of each of the Future Transferring Employee the information set out in Annex B;

6.1.9 “Previous College” means the College engaged in providing services substantially the same as the Services set out in this Financial Memorandum prior to the coming into force of this Contract;

6.1.10 “Public Sector Employee” means a Transferring Employee who immediately before the Employee Transfer Date was employed by an employer covered by a Public Sector Pension Scheme;

6.1.11 “Public Sector Pension Scheme” means:

- 1) The Teachers Pension Scheme (TPS)
- 2) The Local Government Pension Scheme (LGPS)
- 3) The Principal Civil Service Pension Scheme (PCSPS).

As applicable;

6.1.12 “Relevant Legislation” means any statute or regulations or the EC Treaty (or any directives or regulations made there under);

6.1.13 “Relevant Personnel Documentation” means the information set out in Annex C;

6.1.14 “Relevant Transferring Members” means:

- 1) Those Transferring Employees who were members of the LGPS or TPS or who were eligible to join the LGPS or TPS;

6.1.15 “Required Information” means the information set out in the Annex A-F;

6.1.16 “Successor College” means the person nominated by the COUNCIL to undertake the services substantially the same as the Services after the termination of this Contract;

6. 1.17 “Successor College’s Scheme” means:

- 1) The LGPS or TPS or PCSPS; or
- 2) Any other retirement benefit scheme established by the Successor College or to which the Successor College is party,

As applicable;

6. 1.18 “Transferring Employees” means those employees of the Previous

College or The COUNCIL who are employed in the performance of services substantially the same as the Services; and “Transferring Employees” shall be construed accordingly; and

6. .1.19 “TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time.

6. .2 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) ON COMMENCEMENT

6.2.1 The College shall on the Employee Transfer Date become the employer of the Transferring Employee and, whether or not by virtue of TUPE, or as a term of this Agreement, all the respective employer’s rights, duties, powers, liabilities and obligations in respect of the contract of employment of the Transferring Employee shall transfer to the College. The Parties shall respectively comply with all the requirements and obligations, which TUPE imposes on a transferor and transferee in respect of such transfer whether or not as a matter of law TUPE applies;

6. .2.2 For the avoidance of doubt, The College assumes full responsibility for any claims made by a Transferring Employee in respect of their terms and conditions of employment and will indemnify The COUNCIL and the Previous College in respect of any claim brought by any Transferring Employee which arises from operation of this Clause 6.2; and

6..2.3 Where the Transferring Employee is a Public Sector Employee The College must comply with the Cabinet Office Statement of Practice ODPM Circular 03/2003.

6.3 PROTECTION OF PENSIONS – PUBLIC SECTOR EMPLOYEES

6.3.1 The College shall:

6. .3.1.1 In respect of service from the Employee Transfer Date and at a date not later than one month prior to the Employee Transfer Date;

6.3.1.1(a) Establish, or have become party to an employee’s retirement benefit scheme that makes retirement provision which is approved or capable of approval by the Inland Revenue as an exempt approved scheme under Chapter 1 of Part XIV of the Income and Corporation Taxes Act 1988 and capable of receiving a transfer payment from the Public Sector Pension Scheme and certified by the Government Actuary’s Department or other actuary to be agreed between the Parties, to be broadly comparable to the Public Sector Pension Scheme (“the College’s Scheme”); or

- 6.3.1.1(b) Have entered into an Admission Agreement in respect of, or otherwise be able to provide a Relevant Transferring Member with membership of, a Public Sector Pension Scheme, where permissible by the rules of that scheme, or
- 6.3.1.1(c) Establish, or have become party to an employee's retirement benefit scheme that makes retirement provision which is accepted in writing by each individual transferring employee as being adequate for their personal retirement provision.

Admission of the Relevant Transferring Members to the College's Scheme

- 6.3.1.2 Procure that the Relevant Transferring Members shall be automatically admitted to the College's Scheme with effect from the Employee Transfer Date unless any of the Relevant Transferring Members elect within three (3) months of the Employee Transfer Date by notice in writing not to become members of the College's Scheme from such date;
- 6.3.1.3 Invite those Relevant Transferring Members who elect to join the College's Scheme to request that a payment is made from the Public Sector Pension Scheme to the College's Scheme in respect of the retirement benefits accrued in the Public Sector Pension Scheme on behalf of those Relevant Transferring Members;
- 6.3.1.4 Procure that the College's Scheme will accept a cash payment equal to the Transfer Value made from the Public Sector Pension Scheme to the College's Scheme;.
- 6.3.1.5 Procure that the College's Scheme will provide [x] years of reckonable service in respect of each year of a Relevant Transferring Member's period of reckonable service under the Public Sector Pension Scheme to those that each Relevant Transferring Member respectively had under the Public Sector Pension Scheme as at the Transfer Date;

Admission of the Relevant Transferring Members into a Public Sector Pension Scheme

- 6.3.1.6 Where The College selects the option set out in 6.3.1.1(b) ensure that each Transferring Employee may participate, or continue to participate in their respective Public Sector Pension Scheme; and

Continuity of Schemes

- 6.3.1.7 Neither by voluntary act or omission either prevent the College's Scheme from continuing in full force and effect throughout the term of this Contract, or where The College selects the option set out in 6.3.1.1(b)., at any time end the participation of a Transferring Employee of a Public Sector Pension Scheme.
- 6.3.2 Within a reasonable time prior to the Employee Transfer Date The College shall notify each of the Transferring Employees in writing of the terms and conditions upon which they will be employed by The College on and after the Employee Transfer Date and the details of the College's Scheme, or Public Sector Pension Scheme and the proposed organisation of the undertaking after the Employee Transfer Date.
- 6.3.3 The College shall procure that an amendment shall only be made to the College's Scheme which could reduce the value of the benefits of any Relevant Transferring Member which have accrued to the date upon which the power to amend is exercised, if any such amendment is required by legislation or is made with the written consent of the Relevant Transferring Member. The value of the benefits shall make explicit allowance for expected future salary growth as determined by the actuary of The College's Scheme as if the Relevant Transferring Member had continued in employment with The College.
- 6.3.4 At the expiry or termination of this Contract, The College shall procure that the College's Scheme shall offer members of the College's Scheme who were Relevant Transferring Members and whose employment transfers to the Successor College, the option to transfer their accrued pension rights to the Successor College's Scheme on an actuarial basis certified by the actuary as no less favourable than the Transfer Value. The value of such accrued pension rights shall not be reduced because of inadequate funds being available in the College's Scheme.
- 6.3.5 The College shall ensure that on a full or partial wind-up of the College's Scheme, the benefits of any Relevant Transferring Member who is currently employed by The College and accruing benefits immediately before such winding up have been increased to those which could be provided by a past service reserve. The past service reserve is to be calculated with regard to projected final pensionable pay at the assumed date of retirement, or earlier death, or leaving service and not the final pensionable pay at the date of wind-up or earlier date of leaving the College's Scheme and each reserve is to be calculated on a basis determined by the actuary of the College's Scheme.

6.3.6 Where any Relevant Transferring Member transfers to a Sub-Contractor engaged in the provision of the Services, The College shall ensure that in any such transfer, the Sub-Contractor shall establish, or have become party to an employee's retirement benefits scheme on the terms set out in clause 6.3.1.1 ("the Sub-contractor's scheme"). The College shall procure that the Relevant Transferring Member is invited to join the Sub-College's scheme on the terms set out in clauses 6.3.1.2 – 6.3.1.7 The College shall ensure that the Sub-Contractor's scheme shall include the conditions set out in clauses 6.3.3, 6.3.4, 6.3.5 and 6.3.6.

6.4 *Expiry of Financial Memorandum*

6.4.1 The COUNCIL and The College shall act on the basis that TUPE applies on expiry or termination of the Financial Memorandum where The COUNCIL is proposing re-contract for services which are substantially the same as the Services.

6.4.2 During the period of 18 months preceding the expiry of the Financial Memorandum or within 21 days after The COUNCIL or The College has given notice to terminate the Contract, The College shall disclose to The COUNCIL and shall permit The COUNCIL to disclose to any tenderer for services which are substantially the same as the Services, the Initial Staff Information provided that prior to so doing any such tenderer shall have executed in writing a confidentiality undertaking in favour of The College.

6.4.3 During the period of three months preceding the expiry of this Financial Memorandum or within 21 days after The COUNCIL or The College has given notice to terminate the Contract, The College shall, subject to the provisions of the Data Protection Act 1998, provide and thereafter keep updated at monthly intervals, to The COUNCIL and to the Successor Contractor information equivalent to the Relevant Personnel Documentation and the Prescribed Particulars in respect of each employee whom The College reasonably believes will be a Future Transferring Employee provided that prior to so doing the Successor College nominated by The COUNCIL shall have executed in writing a confidentiality undertaking in favour of The College

6.4.4 The College shall make reasonable endeavours to assist the Successor Contractor to communicate with, meet and inform and consult with the employees whom The College reasonably believes will be a Future Transferring Employee and their trade union or other employee representatives for the purposes of complying with TUPE.

6.4.5 The College shall immediately prior to the Future Transfer Date provide to The COUNCIL or the Successor Contractor a complete and accurate list of the Prescribed Particulars and Identification Details of all employees whom it reasonably believes will be Future Transferring Employees.

- 6.4.6 Within a period of 21 days following the expiry or termination of this Financial Memorandum The College shall provide to The COUNCIL or the Successor Contractor in writing Final Pay Details of the Future Transferring Employees.
- 6.4.7 The College warrants that it shall supply complete and accurate information pursuant to clauses 6.4.2, 6.4.3, 6.4.5 and 6.4.6 in all material respects and The College shall indemnify and keep The COUNCIL indemnified fully now and in the future in respect of all or any costs whether arising in contract or under any Relevant Legislation suffered or incurred by The COUNCIL or the Successor Contractor nominated by The COUNCIL by reason of any proceeding, claim or demand arising from or in connection with the provision of information and/or the failure to provide complete and accurate information under clauses 6.4.2, 6.4.3, 6.4.5, and 7.4.6, and/or the provision of assistance and/or failure to provide assistance under clause 6.4.4 of this Contract.
- 6.4.8 After receiving notice of the termination of this Financial Memorandum and for six (6) months preceding expiry of this Financial Memorandum The College shall promptly notify The COUNCIL or the Successor Contractor:
- 6.4.8.1 Of the period of notice given by The College or received from any employee whom The College reasonably believes will be a Future Transferring Employee regardless of when such notice is to take effect;
 - 6.4.8.2 Of the termination, for whatever reason, of the employment of any employee whom The College reasonably believes will be a Future Transferring Employee; and
 - 6.4.8.3 Of any other change to any employee whom The College reasonably believes will be a Future Transferring Employee and their terms and conditions of employment, their Prescribed Particulars and their Relevant Personnel Documentation.
- 6.4.9 The College warrants that it shall supply the Required Information completely and accurately in all respects at the time of supply and shall indemnify and keep The COUNCIL and/or any Successor College indemnified in respect of all and any costs suffered or incurred by The COUNCIL or the Successor College by reason of any proceedings, claim or demand arising out of or in connection with:
- 6.4.9.1 Any claim against The COUNCIL or the Successor Contractor by any Future Transferring Employee so far as it relates to any act or omission of The College after the Employee Transfer Date and prior to the Future Transfer Date; and
 - 6.4.9.2 Any claim against The COUNCIL or the Successor Contractor by any Future Transferring Employee whose name is not

included on the list provided by The College pursuant to Clause 6.4.5 so far as it relates to the dismissal of such Future Transferring Employee within two Months of The COUNCIL or Successor Contractor becoming aware of the transfer of such Future Transferring Employee.

- 6.4.10 For the purposes of Clause 6.4.9, in the event that The COUNCIL or the Successor Contractor incurs costs, liabilities or expenditure in respect of Future Transferring Employees which is greater than would have been the case if the Required Information supplied by The College had been accurate and complete, then such (net) greater costs, liabilities or expenditure shall be deemed to be costs suffered or incurred by The COUNCIL or Successor Contractor and included within the indemnity provided by The College .
- 6.4.11 The COUNCIL or Successor Contractor shall be entitled to recover from The College in full any legal, accountancy and other costs actually and reasonably incurred by The COUNCIL or Successor Contractor in connection with the costs and liabilities indemnified by The College.
- 6.4.12 This clause 6.4 shall continue in effect for six months following the expiry or termination of this Contract.

7 Treatment of New Staff Employed To Deliver the Services

- 7.1 Where The College recruits new employees to deliver the Services, The College must offer employment on fair and reasonable terms and conditions which are, overall, no less favorable than those employees who have transferred to The College.

ANNEX A TO CLAUSE 6 Appendix 3

“Initial Staff Information” Means:

1. Number of staff to be transferred;
2. Gender;
3. Date of Birth;
4. Whether disabled for the purposes of the Disability Discrimination Act 1995;
5. Job description;
6. Work Location;
7. Conditioned hours of work per week;
8. Date of commencement of continuous employment and (if different) the commencement date;
9. Relevant Personnel Documentation;
10. Annual salary and rates of pay band/grade including pending increases;
11. Shifts, unsociable hours or other premium rates of pay;
12. Allowance and bonus details over the last twelve (12) Months including date, type, amount and pending allowances/bonuses;
13. Leave entitlement;
14. Any factors affecting redundancy entitlement;
15. Whether currently on maternity leave or other long term leave of absence;
16. Details of all dismissals or terminations of employment within the preceding six (6) Months of anyone previously employed to or engaged in connection with the provision of the Services;
17. Details of all agreements or arrangements (whether or not legally binding) entered into in relation to the staff with any trade union or organisation or body representing employees or with any employee representatives;
18. Details of all trade disputes and industrial action occurring at any time during the preceding twelve (12) Months to which any member of staff was a party;
19. Details of any trade union or organisation or body representing employees.

ANNEXB TO CLAUSE 6 APPENDIX 3

“PRESCRIBED PARTICULARS” MEANS:

1. Personal Details

Gender;
Date of Birth;
Whether known to be disabled for the purposes of the Disability Discrimination Act 1995, and details of any reasonable accommodation in respect thereof;

2. Employment Details

Job Title;
Staff Number;
Job Description;
Work Location;
Conditioned hours of work per week;
Date of commencement of continuous employment and (if different) commencement date;
Relevant Personnel Documentation;
Notice Periods (for employer and employee);
Annual salary and rates of pay band/grade including pending salary increases;
Shifts, unsociable hours or other premium rates of pay;
Overtime entitlement and details of last twelve (12) Months overtime;
Allowance and bonus details over the last twelve (12) Months including date, type, amount and pending allowances/bonuses;
Provisional details about standing loan/advances on salary or debts;
Existing and future training or sponsorship commitments;
Leave entitlement and accrued leave entitlement including any leave outstanding or expected to be outstanding at the Future Transfer Date;
Annual leave reckonable service date;
Additional employment benefits;
Other payments;
Copies of pay slip data for immediately preceding five (5) Months;
Provisional details of Cumulative Pay (for tax and pension purposes) and cumulative tax paid;
Tax Code;
Voluntary deductions from pay;
National insurance (NI) Number,
NI Contributions rate;
NI benefits start date;

3. Records of Employment Service

Last two appraisal report markings and/or performance assessment details and dates thereof;

Sickness and absence records for two (2) years immediately preceding (including maternity leave);

Details of any current warnings for breach of discipline or poor performances including warning reason, warning date, warning status and start and end date or penalty period.

Details of any other outstanding disputes or grievances including all proceedings before any Employment Tribunal.

4. Method of payment

Instrument of payment;

Bank/building society account details for payroll purposes.

5. Pensions

For pension purposes, the notional reckonable service date;

Pensionable pay history for preceding 3 years;

Percentage of any pay currently contributed under additional voluntary contribution arrangements;

Percentage of pay currently contributed under any added years arrangements.

ANNEX C TO CLAUSE 6 Appendix 3

“RELEVANT PERSONNEL DOCUMENTATION” MEANS:

1 General Practices and Policies

Maternity, paternity and parental leave (including names of those on long-term leave or maternity leave);

Special leave and career breaks;

Sick leave and pay;

Disciplinary/grievance policy and procedures;

Equal Opportunities policy;

All documents relevant to terms and conditions of employment, including manuals, codes, handbooks, procedure guides, publications and agreements (including collective agreements);

Any other letters or documents or collective agreements affecting terms and conditions of employment;

2 Redundancy

Full details of any practice, policy or procedure which the College has in relation to redundancy and copies of relevant documents.

ANNEX D TO CLAUSE 6 Appendix 3

“FINAL PAY DETAILS” MEANS:

In respect of each Future Transferring Employee, the following information:

- Final Month's copy pay slip data;
- Cumulative pay for tax and pension purposes;
- Cumulative tax paid;
- Tax code.

ANNEXE TO CLAUSE 6 Appendix 3

“IDENTIFICATION DETAILS” MEANS:

1. In respect of each Future Transferring Employee, the following information:

Name

Home Address

Work Telephone Number

Home Telephone Number (where available)

Next of Kin

ANNEXF TO CLAUSE 6 Annex 3

ODPM Circular 3/2003: Best Value Performance Improvement

This circular can be found at:

<http://www.communities.gov.uk/index.asp?id=1163718>

ANNEX G TO CLAUSE 6 OF Appendix 3

TRANSFER VALUES

Bulk transfer values will be inserted in the Financial Memorandum prior to signing.