



CONTRACT

**Between Hertfordshire County Council
acting through its Children's Services Department**

And

**The Hertfordshire Community Free School
Company**

**For the provision of
Bids to the DfE for 3 primary age academies (free schools) in
Hertfordshire**

CONTRACT REF: HCC1205648

Full Contract Issue August 2012

SECTION 1 - FORM OF CONTRACT

THIS CONTRACT is made between

HERTFORDSHIRE COUNTY COUNCIL of County Hall, Hertford, SG13 8DF

(known as "The Council" hereafter)

and

The Hertfordshire Community Free School Company, ("the Contractor") having its main or registered office at

Address: The Old Manor House
54 Park Lane
Blunham
Beds
MK44 3NJ


together referred to as "the Parties"

IT IS AGREED THAT:

1. This Form of Contract (Section 1) together with the Conditions of Contract (Section 2), the Specification and Monitoring Arrangements (Schedule 1), Financial Schedule (Schedule 2), Change Schedule (Schedule 3) are the documents which collectively form "the Contract" (as defined in clause 3).
2. The Contract effected by the signing of this Form of Contract constitutes the entire Contract between the Parties relating to the subject matter of the Contract and supersedes all prior contracts, negotiations, representations or understandings whether written or oral.

SIGNED:

Duly Authorised on behalf of Hertfordshire County Council

Signature 

Name

Designation Contract Manager under Contract Regulations

Date 17.8.12

Signature 

Name Simon Newland

Designation: Contracting Officer under Contract Regulations

Date 17.8.12

Signature Justin Donovan

Name 

Designation Senior Procurement Officer under Contract Regulations

Date 17.8.12

Duly Authorised on behalf of ... The Hertfordshire Community Free School Company Contractor

Signature 

Name GILL JONES

Designation COMPANY DIRECTOR

Date 17.8.12

Signature 

Name ANDREW NIGHTINGALE

Designation DIRECTOR

Date 17/8/12

**HERTFORDSHIRE COUNTY COUNCIL
Children's Services**

**FOR HERTFORDSHIRE COUNTY COUNCIL
CONTRACT REF: HCC1205648**

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A. GENERAL PROVISIONS

1. DEFINITIONS

"Affected Party"

means a party affected by a Force Majeure Event.

"Approval"

means the written consent of the Council's Contract Manager or any person authorised by the Council's Contract Manager. ("Approved" or "Approve" shall be construed accordingly).

"Assets"

means all assets and rights which are in the possession, custody, control of the Contractor and which the Contractor has the power to transfer to enable the Contractor or Replacement Contractor to carry out the Services in accordance with this Contract (or so many of them as the Council or the Replacement Contractor should require), including:

- (a) any books, records, and data (including operating and maintenance manuals, health and safety manuals and other know-how)
- (b) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (c) any revenues and any other contractual rights;
- (d) any intellectual property rights; and

"Best Value Duty"

means the duty imposed on the Council by Part 1 of the Local Government Act 1999 ("1999 Act") (as may be amended from time to time) and under which the Council is under a statutory duty to continuously improve the way its functions are exercised having regard to a combination of economy efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State the Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to or in connection with Part 1 of the 1999 Act and any subsequent legislation.

"Change in law"

means the coming into effect after the Commencement Date of this Contract of:

- (a) Legislation, other than any Legislation which on the Commencement Date of this Contract has been published:
 - i. In a Bill as part of a Government Departmental Consultation Paper
 - ii. In a Bill
 - iii. In a draft statutory instrument or
 - iv. Published as a proposal in the Official Journal of the European Communities
- (b) Any Guidance; or
- (c) Any applicable judgment of a relevant Court of law which changes or establishes a binding precedent.

“Charging Period”	means the invoice period as identified from day one (1) by the Council’s Contract Manager.
“Clause”	means the Clause(s) contained within the Conditions of Contract.
“Client”	means the Council and includes the Client’s successors and assigns.
“Code” or “Code of Practice”	means the Code of Practice on Workforce Matters in Local Council Service Contracts as currently contained in ODPM Circular 3/03 Annex D.
“Commencement Date”	means the date specified in Clause 3.1 of the Contract.
“Commercially Sensitive Information”	means any information (whether or not Confidential Information) which is agreed by the Parties from time to time during the Contract Period as being commercially sensitive.
“Conditions of Contract”	means this Contract’s terms and conditions and/or any modification duly agreed in accordance with this Contract.
“Confidential Information”	means all information of either Party or any sub-contractor relating to its business, affairs, ideas, prices, methods, plans, products, services, trade secrets, know-how, personnel, or customers whether disclosed under this Contract or prior to this Contract taking effect, during the tender process or negotiations for this Contract.
“Contract”	means this contract and all Schedules attached hereto.
“Contract Period”	means the period during which this Contract is in force and effect pursuant to Clause 3 (Duration of Contract).
“Contractor”	means The Hertfordshire Community Free School Company including its Staff.
“Contractor’s Authorised Representative”	means such person nominated in writing by the Contractor and approved by the Council’s Contract Manager.
“Contracting Authority”	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Council.
“Council”	means Hertfordshire County Council or its successor body as applicable.
“Council’s Complaints Procedure”	means the process set out in Clause 62 (Escalation Procedure) as may be amended from time to time.
“Council’s Contract Manager”	means the person appointed as such by the Council pursuant to Clause 13.1 hereof.
“Council’s CRB Umbrella Body”	means the Council’s Human Resource team responsible for the advice, processing and storage of CRB checks.

"Council's Data"

means

- (i) all data, records, information, text, drawings, diagrams, images, or sounds generated or processed by the Contractor or provided to the Contractor for processing under this Contract which at all times shall remain the property of the Council or
- (ii) any documentation and information produced by or received from or on behalf of the Council in relation to the Services and stored on whatever medium.

"Council's Environmental Policy"

means the Council's document so titled, available on the Herts Direct website.

"Court"

means a court of competent jurisdiction within the United Kingdom including the European Court of Justice and acts or directions of the European Union Commission.

"Criminal Records Bureau"

means the bureau established pursuant to Part V of the Police Act 1997.

"Database"

means ContactPoint database.

"Directives"

means the EC Acquired Rights Directive 77/187 as amended.

"Discriminatory Change in Law"

means a Change in Law, the terms of which will apply expressly to:

- (a) this Contract and not to similar contracts procured under best value
- (b) the Contractor and not to other persons.

"Dispute Resolution Procedure"

means the procedure set out in Clause 38 of this Contract.

"Efficiency Gain Plan"

means the Efficiency Gain Plan detailed in Clause 48.3 which has been agreed between the parties

"Enhanced CRB"

means enhanced checks carried out under the bureau established pursuant to Part V of the Police Act 1997.

"Equipment"

means the Contractor's or the Council's (as the case may be) equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under this Contract.

"Force Majeure Event"

means and includes the occurrence after the Commencement Date of:

- (a) war, civil war, riot, civil unrest, civil emergency, terrorist attack or threat of terrorist attack;
- (b) nuclear, chemical or biological contamination; or
- (c) an act of God.

"Future Contractor"	means the definition given to it in clause 51 of this Contract.
"General Change in Law"	means a Change in Law which is not Discriminatory Change in Law or a Specific Change in Law.
"Intellectual Property Rights" ("IPR")	means patents, inventions, trade marks, service marks logos, design rights (whether registerable or otherwise) applications for any of the foregoing, copyrights, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and to sue for passing off.
"Independent Safeguarding Authority" (ISA)	means a Non-Departmental Public Body set up to help prevent unsuitable people from working with children or young people or vulnerable adults with the responsibility to assess every person who wants to work or volunteer with vulnerable people in order to be gain ISA status and become ISA registered.
"Law"	means but is not limited to any applicable Act of Parliament, statutory legislation, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bylaw, regulatory policy, guidance or industry code, judgment of a relevant Court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply. Any reference to "Legislation" shall be construed accordingly.
"Month"	means calendar month.
"Named Employee"	means the Contractor's Staff including all volunteers involved in the provision of the Services.
"New Staff"	means those new employees employed by the Contractor to provide the Services who will be working alongside the Transferring Employees.
"Notice"	means any formal communication between the Parties as required by the Contract.
"Party"	means a party to this Contract and "Parties" shall be construed accordingly.
"Price"	means the price exclusive of any applicable tax, payable to the Contractor by the Council under this Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under this Contract.
"Pricing Schedule"	means the costing charts in Return Schedule2.
"Qualifying Change in Law"	means:

- (a) General Change in Law
- (b) Specific Change in Law which was not foreseeable at the date of this Contract.

“Records”

means Council's Data.

“Replacement Contractor”

means any third party appointed by the Council from time to time to provide any services which are substantially similar to any of the Services, or received in substitution for any of the Services, following the expiry, termination or partial termination of this Contract whether those services are provided by the Council internally and/or by any third party.

“Schedules”

means the Schedules attached to this Contract.

“Services”

means the Services to be provided pursuant to this Contract as specified in the Specification Schedule and Service shall be construed accordingly.

“Specific Change in Law”

means any Change in Law which specifically refers to the provision of a service being the same as or similar to the Services or to the holding of shares in companies whose main business is providing a service being the same as or similar to the Services.

“Specification”

means the description of the Services to be provided under this Contract and attached as Schedule 1.

“Staff”

means all persons employed by the Contractor to perform this Contract together with the Contractor's servants, suppliers, agents and sub-contractors used in the performance of this Contract.

“TUPE”

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 06/246 as amended or modified from time to time; “TUPE Regulations” shall have the same meaning.

“VAT”

means value added tax charged under the Value Added Tax Act 1994 or any similar tax from time to time replacing it or performing a similar fiscal function.

“Variation”

means any change to:

- (i) the terms and Conditions of Contract or Schedules
- (ii) the Services or any of them
- (iii) the standard of performance required of a Party materially over and above that expressly stated or provided for under this Contract provided such variation or change is in accordance with Clause 21.

“Working Day”

means a day (other than a Saturday or a Sunday) on which banks are opened for domestic business in the City of London.

2. INTERPRETATION OF THIS CONTRACT

- 2.1 Except as otherwise expressly provided, the documents comprising this Contract are to be taken as mutually explanatory of one another.
- 2.2 Should either Party become aware of any ambiguities or discrepancies in or between any of the documents comprising this Contract, it shall immediately inform the other giving full details. Any such notified ambiguities or discrepancies shall be resolved by the Council's Contract Manager and the Contractor's Authorised Representative.
- 2.3 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Contractor and the Contractor shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.
- 2.4 Any references to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force, and to include any bylaws, licenses, statutory instruments, rules, regulations, orders, notices, directions, European Union legislation made thereunder, and any condition attaching thereto.
- 2.5 The headings in this Contract are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.
- 2.6 The expression 'person' used in this Contract shall include (without limitation) any individual partnership, local authority or incorporated or unincorporated body.
- 2.7 In this Contract, the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa.
- 2.8 References to Clauses or Schedules shall be to Clauses and Schedules of this Contract.
- 2.9 Any undertaking hereunder not to do any act or thing shall be deemed to include an undertaking not to permit or allow the doing of that act or thing where that permission or allowance is within the control of the Contractor.
- 2.10 In the event of any inconsistency or conflict between the main body of this Contract and the Schedules, the order or precedence as set out below shall prevail:
- (a) The Conditions of this Contract;
 - (b) Specification to include any Appendices;
 - (c) Schedules of this Contract
- 2.11 In the event of a conflict (or any inconsistency) between the provisions of Clause 2.10 above and any Variations made to this Contract after the Commencement Date, the Variation as agreed between the Parties shall take precedent over the particular subject matter *mutatis mutandis*.

3. DURATION OF CONTRACT

- 3.1 This Contract shall commence on the 1st August 2012 and shall continue for a period of 16 months thereafter until 31st December 2013 unless terminated in accordance with the provisions of this Contract or extended at the sole discretion of the Council for 18 months by giving at least 2 Months' prior notice in writing.
- 3.2 If the Council exercises its discretion to extend the Contract Period pursuant to Clause 3.1 then the terms and conditions of this Contract between the Council and the

Contractor shall be the terms and conditions of the extended Contract, save for this Clause 3 and the Pricing Schedule which may be revised and agreed by both Parties.

4. ENTIRE AGREEMENT

- 4.1 Except where expressly provided in this Contract this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations communications negotiations and understandings (whether oral or written) concerning the subject matter of this Contract.
- 4.2 Neither Party has relied on earlier statements or representations made by the other or the other's agents or advisers.
- 4.3 Nothing in this Clause 4 is intended to exclude or limit any statement representation or warranty made fraudulently or to any provision of this Contract which was induced by fraud for which the remedies available shall be all those available under the law governing this Contract.
- 4.4 No subsequent amendment or variation to this Contract shall affect the provisions and operation of this Clause 4.

5. NOTICES

- 5.1 Except as otherwise expressly provided within this Contract, no Notice from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.
- 5.2 Any Notice which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) such letters shall be addressed to the other Party in the manner referred to in Clause 5.3. Provided the Notice is not returned as undelivered, the Notice shall be deemed to have been given two (2) Working Days after the day on which the letter was posted or sooner where the Party acknowledges receipt of such letters.
- 5.3 For the purposes of Clause 5.2, the address of each Party shall be the Client: Hertfordshire County Council, County Hall Hertford, SG13 8DF and the Contractor: The Old Manor House, 54 Park Lane, Blunham, Beds, MK44 3NJ

6. CONFLICT OF INTEREST

The Contractor shall take appropriate steps to ensure that neither the Contractor nor any of its Staff are placed in a position where there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Council under the provisions of this Contract. The Contractor will disclose to the Council full particulars of any such conflict of interest which may arise and take all reasonable steps to remove any such conflict to the satisfaction of the Council's Contract Manager.

7. USE OF THE COUNCIL'S CREST OR LOGO

The Contractor shall not use the Council's crest either on its own or in combination with the Contractor's crest or logo nor cause or permit it to be used.

8. LIEN OR ENCUMBRANCE

The Contractor will not create, or allow any other person to create, any lien or encumbrance on any property of the Council.

9. COUNTERPARTS

If this Contract is executed in counterparts, all of the counterparts taken together shall be one and the same instrument.

10. SEVERANCE

- 10.1 If any term condition or provision contained in this Contract shall be held to be invalid unlawful or unenforceable to any extent such term condition or provision shall not affect the validity legality or enforceability of the remaining parts of this Contract.
- 10.2 Pursuant to Clause 10.1, the parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted which as nearly as possible validly gives effect to their intentions as expressed in this Contract.
- 10.3 Failure to agree on such provision as aforesaid within three months of commencement of negotiations may result in automatic termination of this Contract.
- 10.4 The obligations of the parties under any invalid, illegal or unenforceable provision of this Contract shall be suspended during such negotiations.

B. PROVISION OF THE SERVICES

11. THE SERVICES

- 11.1 The Contractor shall provide the Services during the Contract Period in accordance with the Specification and the terms of this Contract.
- 11.2 The Contractor shall discharge its obligations under this Contract with all due skill care and diligence by appropriate, competent, qualified and trained Staff.
- 11.3 Timely provision of the Services shall be of the essence of this Contract unless otherwise agreed in writing.
- 11.4 The Contractor's Staff employed in and about the provision of the Services shall at all times exercise care in the execution of their duties and the Contractor shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Services.

12. CONTRACTOR'S WARRANTY, RESPONSIBILITY AND KNOWLEDGE

- 12.1 The Contractor warrants and represents that:
 - 12.1.1 it has the full capacity and authority and all necessary consents to enter into and perform this Contract;
 - 12.1.2 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.
- 12.2 The Contractor shall be deemed to have examined the Conditions of Contract, Specification and Schedules and to have satisfied himself before tendering as to the correctness and sufficiency of his tender to cover all his obligations under this Contract and for all matters and things necessary for the proper completion of the Services.

- 12.3 The Contractor shall safeguard the Council's interest in this Contract against fraud generally and in particular fraud on the part of the Staff. The Contractor shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

13. THE COUNCIL AND CONTRACTOR'S STAFF

- 13.1 The Council shall appoint a Contract Manager to administer this Contract. The Council's Contract Manager shall exercise the functions allocated to him under this Contract. The Council may from time to time remove and replace the Council's Contract Manager such removals or replacements being notified in writing to the Contractor's Authorised Representative.
- 13.2 The Council will require the Contractor to provide in writing the name, telephone number and contact address for the Contractor's Authorised Representative who will be responsible for the smooth running of this Contract. The Contractor's Authorised Representative must be empowered by the Contractor to take all decisions in respect of this Contract and must be available to the Council at all times.
- 13.3 The Contractor's Authorised Representative must have sufficient knowledge of this Contract and the Services to deal with all the Council's requirements in respect of the performance of this Contract. The Council reserves the right to reject any nominated Contractor's Authorised Representative who is unsuitable in respect of skill and knowledge to carry out these functions.
- 13.4 The Contractor's Authorised Representative shall be in control of the provision of the Services, and shall receive on behalf of the Contractor all directions and instructions from this Council.
- 13.5 The Council reserves the right under this Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:
- 13.5.1 any member of the Contractor's Staff; or
- 13.5.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.
- 13.6 If and when directed by the Council, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with this Contract to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Council may reasonably desire.
- 13.7 The Council shall allow representation to be made by the Contractor before any of the Contractor's Staff is to be refused access to any premises occupied by or on behalf of the Council.
- 13.8 Any Staff of the Contractor whose conduct places an end user at risk or might bring the Council into disrepute shall be the subject of immediate investigation by the Contractor and dealt with to the satisfaction of the Council which might direct that the employee be removed from activities in pursuance of this Contract.
- 13.9 The Contractor shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Contractor by the Council for entry to any Premises owned by the Council and shall only permit such keys, passes and other means of

access to be used in accordance with the Council's Contract Manager's instructions and then only to the extent required for the purposes of providing the Services.

- 13.10 The Contractor shall ensure that the Council's Contract Manager is informed as soon as reasonably practicable of the loss of any keys, passes and other means of access and shall reimburse to the Council any cost of replacement and/or any reasonable security measures implemented as a direct result of such loss.

C. FINANCIAL ARRANGEMENTS

14. CONTRACT PRICE AND PAYMENT

- 14.1 At the end of each Charging Period the Contractor shall submit an invoice to the Council for payment for Services or parts thereof and in the event of any dispute regarding an invoice which has been notified to the Contractor, the Contractor shall issue a new invoice for the disputed amount and a new invoice for the undisputed amount.
- 14.2 Within twenty eight (28) Calendar Days of the receipt of an undisputed invoice the Council shall pay the Contractor by BACS (Bankers Automated Clearing System). Once a disputed invoice has been agreed between the Parties, payment shall be due from the Council to the Contractor within twenty eight (28) Calendar Days of issue of a revised invoice.
- 14.3 Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Council's Contract Manager to substantiate the invoice.
- 14.4 Late payment of charges by the Council shall attract interest at the rate of [REDACTED] per annum over the Bank of England Official Bank Rate from the due date to the date of actual payment, and will be applicable only to an undisputed invoice. The Contractor must raise a separate invoice in order to initiate this payment.
- 14.5 The Council may reduce payment in respect of any Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Council.
- 14.6 The Contractor shall not suspend the provision of Services for failure to pay disputed charges.
- 14.7 No debt incurred in the delivery of this Contract may be assigned without the prior written permission of the Council.
- 14.8 The Contract Price shall remain fixed for a minimum of 12 months from the Commencement Date.

15. RECOVERY OF SUMS DUE

- 15.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Council in respect of any breach of this Contract), the Council may deduct that sum from any sum then due, or which at any later time may become due to the Contractor under this Contract.
- 15.2 Any overpayment by the Council to the Contractor shall be recoverable by the Council.

- 15.3 The Contractor shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has obtained the prior Approval of the Council to such deduction.

16. VALUE ADDED TAX

- 16.1 Any consideration due in respect of taxable supplies under this Contract is exclusive of VAT.
- 16.2 If this Contract or anything in it gives rise to a taxable supply for VAT purposes on the production of a valid VAT invoice the appropriate Party shall pay to the other a sum equal to that VAT in addition to the relevant consideration.
- 16.3 The appropriate Party shall provide to the other any information reasonably requested in relation to the amount of VAT chargeable in accordance with this Contract.
- 16.4 A VAT invoice will not be valid for the purposes of charging VAT if more than forty-eight (48) Months have elapsed since the time of supply.
- 16.5 It is agreed that neither Party shall be liable for any penalties or interest arising from the accounting nor the failure of the other to account to HM Revenue and Customs at the correct time for any VAT correctly due in relation to the consideration referred to in this Clause 16.

17. NOT USED

18. NOT USED

19. GRATUITIES AND GIFTS

The Contractor and its Staff in the provision of the Services shall not solicit or accept any gratuity tip or any other form of money taking or reward collection or charge for any part of the Services other than charges properly Approved by the Council in accordance with the provisions of this Contract. Failure to comply with this Clause 19 shall invoke the provisions of Clause 31.1 (Termination) of this Contract.

D. CONTROL OF THIS CONTRACT

20. ASSIGNMENT AND SUBCONTRACTING

- 20.1 The Contractor shall not assign or in any way dispose of this Contract or any part thereof.
- 20.2 The Contractor shall not sub-contract the whole or any part of this Contract to any person without the prior Approval of the Council (such Approval not to be unreasonably withheld or delayed).
- 20.3 If the Contractor should sub-contract the provision of the Services or any part thereof to any person, that shall not relieve the Contractor from any liability or obligation under this Contract and the Contractor shall be responsible for the acts, defaults or neglect of any sub-contractor or agents in all respects as if they were the acts, defaults or neglect of the Contractor.
- 20.4 Where the Council has Approved the use of sub-contractors, such sub-contracts shall be on the same terms as this Contract and for the avoidance of doubt the sub-contract shall not contain any terms which are incompatible with this Contract.

- 20.5 The Council shall be entitled to:
- 20.5.1 assign, novate or otherwise dispose of its rights and obligations under this Contract either in whole or part to any Contracting Authority or Replacement Contractor which shall not increase the burden of the Contractor's obligations pursuant to this Contract; or
 - 20.5.2 novate this Contract to any body established by statute in order substantially to perform any of the functions that previously had been performed by the Council which shall not increase the burden of the Contractor's obligations pursuant to this Contract.
- 20.6 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to Clause 20.7, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Council.
- 20.7 If this Contract (whether in whole or part) is novated pursuant to Clause 20.5 to an undertaking that is not a Contracting Authority, or if an undertaking that is not a Contracting Authority becomes the Council (in the remainder of this Clause 20.7 both such undertakings are referred to as the "Transferee"):
- 20.7.1 the rights of termination of the Council in Clause 31 (Termination) shall be available, mutatis mutandis, to the Contractor if applicable to the Transferee; and
 - 20.7.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the Contractor, such consent not to be unreasonably withheld.

21. AMENDMENTS VARIATIONS AND CHANGE CONTROL

- 21.1 The terms of this Contract shall not be amended or varied except in writing signed by the Council's Contract Manager and the Contractor's Authorised Representative.
- 21.2 The Council reserves the right on giving reasonable written notice from time to time to require changes to the Services for any reasons whatsoever by invoking the Change Control Procedure in Schedule 3.
- 21.3 Any Variations shall be communicated in writing by the Council's Contract Manager to the Contractor's Authorised Representative in accordance with the Notice provisions of Clause 5 (Notices). All Variations shall be in the form of an addendum to this Contract.
- 21.4 In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Council and agreed in writing with the Contractor and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances.
- 21.5 If the Variation in the Price cannot be agreed between the Parties the matter shall be determined in accordance with the provisions of Clause 38 (Dispute Resolution).
- 21.6 The Contractor shall provide such information as may be reasonably required to enable such varied price to be calculated.

22. WAIVER

- 22.1 The failure of either Party to insist upon strict performance of any provision of this Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.
- 22.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 5 (Notices).
- 22.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

23. PERFORMANCE MONITORING AND CONTRACT REVIEW

Regular contract review meetings will be held between the Contractor and the Council to monitor the Contractor's performance both on this Contract as a whole and against performance targets outlined in the Service Specification. The Contractor shall afford all necessary resources and facilities to allow the Council to carry out its contract reviews and provide all reasonable information required.

24. REMEDIES FOR POOR PERFORMANCE

- 24.1 If the Contractor commits a breach of this Contract which is capable of remedy, the Council's Contract Manager shall notify the Contractor in writing indicating the areas of concern and shall require a plan of corrective action including timescales to be put into place (the "Action Plan").
- 24.2 Pursuant to Clause 24.1, the Contractor shall produce the Action Plan within an agreed timescale. The Council's Contract Manager may require specific amendments to the Action Plan. If the Contractor fails to produce the Action Plan or if there are any elements of the Action Plan that the Council's Contract Manager disagrees with then the Council's Contract Manager shall prepare the Action Plan or specify amendments to the Action Plan (as the case may be) and the Contractor shall pay to the Council the costs of such preparation.
- 24.3 The Action Plan will be confirmed in writing by the Council's Contract Manager to the Contractor's Authorised Representative.
- 24.4 Improvements in performance will be monitored in accordance with the Action Plan.
- 24.5 If the Contractor fails to satisfy the Council that the areas of concern raised in the Action Plan have been remedied then the Council shall be entitled to terminate this Contract completely or in respect of the relevant Service without further notice and the provisions of Clause 32 (Consequences of Termination) of this Contract shall apply.
- 24.6 Without prejudice to any other rights and remedies the Council may have pursuant to this Contract the Contractor shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a consequence of the Contractor's delay in the performance of its obligations under this Contract and which delay the Contractor has failed to remedy following reasonable notice from the Council.
- 24.7 For the avoidance of doubt, If the Council's Contract Manager informs the Contractor's Authorised Representative in writing that the Council considers that any part of the Services do not meet the requirements of this Contract or differ in any way from those

requirements, and this is other than as a result of default or negligence on the part of the Council, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Contract within such time agreed under the Action Plan.

25. AGENCY

- 25.1 Neither the Contractor nor its Staff shall in any circumstances hold itself or themselves out as being the servant or agent of the Council otherwise than in circumstances expressly permitted by this Contract.
- 25.2 Neither the Contractor nor its Staff shall say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Council.
- 25.3 Nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Council to the Contractor that may arise by virtue of either a breach of this Contract or by negligence on the part of the Council and the Council's staff.

26. ATTENDANCE AT MEETINGS

Provided that the Contractor's Authorised Representative is given reasonable notice of the same, the Contractor's Authorised Representative shall attend meetings where an issue related to the Services is to be considered.

27. OFFER OF EMPLOYMENT

For the duration of this Contract and for a period of twelve (12) Months thereafter the Contractor shall not employ or offer employment to any of the Council's staff who have been associated with the procurement and/or the contract management of the Services without the Council's prior Approval. This clause shall not affect an offer of employment which results from a response by the staff to any public advertisement.

28. COMPLAINTS

- 28.1 The Contractor shall ensure that it has a complaints procedure in respect of complaints about the Services, which shall be approved by the Council from time to time.
- 28.2 The Contractor shall ensure that it is stated in its complaints procedure:
- 28.2.1 that the Service being provided is being provided on behalf of the Council
- 28.2.2 that in the event that any end user of the Services, or member of the general public is dissatisfied with the manner in which or the standard to which the Service is being provided, they may (but only after exhausting the Contractor's complaints procedure) make a formal complaint to the Council's Contract Manager
- 28.2.3 the address and telephone number of the Council's Contract Manager.

E. INSURANCE AND LIABILITY

29. INSURANCE

29.1 Public Liability Insurance

- 29.1.1 Without thereby limiting its responsibilities under this clause the Contractor shall insure with a reputable insurance company against any damage loss or injury which may occur to any property or to any person by or arising out of or in consequence of the Contractor's execution of its obligations under this Contract or in carrying out of this Contract.
- 29.1.2 For all claims against which Clause 29.1.1 requires the Contractor to insure the insurance cover shall be the sum of five million pounds (£5,000,000) or such greater sum as the Contractor may choose in respect of any one incident.
- 29.1.3 The Contractor shall supply to the Council forthwith and upon each renewal date of any relevant policy a certificate from its insurers or brokers confirming that the Contractor's insurance policies comply with Clause 29.1.2.
- 29.1.4 If the Contractor fails to take out and maintain the insurance required under Clauses 29.1.1 and 29.1.2 then the Council may itself insure against any risk in respect of which the failure shall have occurred and a sum or sums equivalent to the amount paid or payable by the Council in respect of premiums therefore may be deducted by the Council from any monies due or to become due to the Contractor under this Contract or such amount may be recoverable by the Council from the Contractor as a debt.

30. LIABILITY

- 30.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations.
- 30.2 The Contractor shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses, consequential loss or damage and any other liabilities whatsoever arising out of, in respect of or in connection with this Contract including but not limited to any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.
- 30.3 This Clause 30 shall not apply if the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default or by any circumstances within its control.
- 30.4 As soon as reasonably practicable after either Party receives any Notice, demand, letter or other document concerning any claim from which it appears that the Party (the "Indemnified Party") is or may become entitled to indemnification under this Contract, it shall give Notice in writing to the other Party (the "Indemnifier").
- 30.5 On the giving of a Notice pursuant to Clause 30.4 above, where it appears that the Indemnified Party is or may become entitled to indemnification in respect of the liability arising out of an act or omission which is the subject of a claim the Indemnifier shall:
- 30.5.1 be entitled to and shall resist the claim in the name of the Indemnified Party; and
- 30.5.2 have the conduct of any defence, dispute, compromise or appeal of the claim and of any incidental negotiations.
- 30.6 The Indemnified Party will give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.

30.7 This Clause 30 shall expressly survive termination of this Contract.

F. TERMINATION

31. TERMINATION

31.1 Termination for Irremediable Breach

The Council may by Notice in writing forthwith (or at such later date as it may specify) terminate this Contract in whole or in part if any one of the events set out in this Clause 31.1 occurs.

31.1.1 if the Contractor has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Contract or any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other contract with the Council or if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) or if in relation to the Contract with the Council the Contractor or any person employed by it or acting on its behalf appears to have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or to have given any fee or reward contrary to Section 117(2) of the Local Government Act 1972.

31.1.2 if at any time it is discovered by the Council that the Contractor:

31.1.2.1 has fixed or adjusted the amount of its tender for this Contract by or in accordance with any Contract or arrangement with any other person; or

31.1.2.2 communicated to any person other than the Council the amount or approximate amount of its proposed tender (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender) or;

31.1.2.3 entered into any contract or arrangement with any other person that it would refrain from tendering or as to the amount of any tender to be submitted; or

31.1.2.4 offered or agreed to pay or gave or did pay or give any sum of money inducement or valuable consideration directly or indirectly to any person in respect of an act or omission in relation to any other tenderer or proposed tenderer for the Services.

31.1.3 if the Contractor being an individual or in the case of the Contractor being a partnership any partner becomes bankrupt or makes a composition or arrangement with creditors or has a proposal made for the voluntary arrangements for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act 1986.

31.1.4 if the Contractor being a company:-

31.1.4.1 ceases to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets which in the

reasonable opinion of the Council would adversely affect the delivery of the Services;

31.1.4.2 the majority of shares carrying a right to vote in the Contractor or its Holding Company are acquired by a person who is not at the date hereof a majority shareholder;

31.1.4.3 has an application made under the Insolvency Act 1986 in its respect to the Court for the appointment of an administrative receiver;

31.1.4.4 has a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;

31.1.4.5 has a liquidator receiver or manager of its business or undertaking duly appointed;

31.1.4.6 has an administrative receiver as defined in the Insolvency Act 1986 or the Companies Act 1985 appointed;

31.1.4.7 has a proposal made for a voluntary arrangement for a composition in satisfaction of debts or a scheme of arrangement of the Contractor's affairs approved in accordance with the Insolvency Act 1986;

31.1.4.8 has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge

31.1.4.9 is in circumstances which entitle the Court or a creditor to appoint or have appointed a receiver a manager or administrative receiver or which entitles the Court to make a winding-up order

31.1.4.10 has an administration order made in respect of it.

31.1.5 If the Contractor is a partnership and:

31.1.5.1 the senior equity partners at the date hereof or a substantial number thereof leave the partnership; and/or

31.1.5.2 it ceases to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets which in the reasonable opinion of the Council would adversely affect the delivery of the Services.

31.1.6 The Council may terminate this Contract by Notice in writing with immediate effect where the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which in the opinion of the Council impacts adversely and materially on the performance of this Contract.

31.2 Termination on Remediable Breach

31.2.1 Where in the Council's opinion the Contractor has committed a remediable breach, Clause 24 (Remedies for Poor Performance) of this Contract shall be invoked.

- 31.2.2 If at any time the Contractor commits a persistent breach or persistent breaches of any of the terms of this Contract, and where the breach or breaches are not remedied by the Contractor within thirty (30) Working Days (or such other time specified by the Council) of being requested to do so in writing by the Council's Contract Manager then this Contract will be terminated by the Council without further notice.

31.3 General Termination

- 31.3.1 The Council may by further Notice in writing forthwith (or such later date as it may specify) terminate this Contract in whole or in part in accordance with the Clauses below:
- 31.3.2 where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 31.3.3 if at any time the Contractor commits a substantial breach of any of the terms of this Contract and the Council's Contract Manager reasonably regards such a breach as incapable of being remedied.
- 31.3.4 This Contract may be terminated for any reason by either party at any time by either party giving not less than six months notice in writing.
- 31.3.6 This Contract may be terminated at any time by mutual agreement in writing.

32. CONSEQUENCES OF TERMINATION

- 32.1 If the Council terminates this Contract under Clause 31 (Termination) or Clause 24 (Remedies for Poor Performance) or terminates the provision of any part of this Contract, the Council shall:
- 32.1.1 be entitled to employ and pay Replacement Contractor to provide and complete the provision of the Services or any part thereof; and
- 32.1.2 be entitled to recover from the Contractor the costs incurred of making those other arrangements including any additional expenditure incurred by the Council; and
- 32.1.3 be entitled to deduct from any sum or sums which would have been due from the Council to the Contractor under this Contract; and
- 32.2 The Council shall be entitled to recover as a debt:
- 32.2.1 any expenditure incurred under Clause 32.1;
- 32.2.2 any other loss or damage to the Council resulting from or arising out of the termination of this Contract;
- 32.2.3 any cost to the Council of the time spent by its staff in terminating this Contract and in making alternative arrangements thereof.
- 32.3 Where this Contract is terminated, no further payments shall be payable by the Council to the Contractor until the Council has established the final cost of making alternative arrangements.

- 32.4 The Contractor shall do all acts reasonably necessary to ensure that the Council or its Replacement Contractor obtains all of its rights title and interest in and to the assets (or any such assets as the Council or its Replacement Contractor requires) with effect on and from the date of termination and shall provide an inventory and description of all such assets no later than five (5) Working Days after the date of termination of this Contract.
- 32.5 The rights of the Council under this clause are in addition to and without prejudice to any other rights which the Council may have whether against the Contractor directly or pursuant to any guarantee, indemnity or bond.
- 32.6 The expiry or termination of this Contract for whatever cause shall not affect any provision of this Contract capable of surviving or operating in the event of termination of this Contract and shall not prejudice or affect the rights of any Party against the other Party in respect of any breach of this Contract.
- 32.7 On giving written Notice to the Contractor and within thirty (30) Working Days of the date of the expiry or termination of this Contract the Council shall have the right:
- 32.7.1 to offer any of the Contractor's Staff who has previously been involved in performing the Services employment or a contract for Services with the Council and the Contractor agrees that if such person accepts such offer the Contractor shall release such person from any contractual restriction with it which such acceptance may otherwise contravene;
 - 32.7.2 to require the Contractor to provide for a period of four (4) Months following the date of expiry or termination such advice assistance and co-operation as the Council may reasonably require to enable the Council to provide the Services in-house or to procure their provision by a Replacement Contractor;
 - 32.7.3 to contract directly with any Replacement Contractors where the Services are provided by the Contractor through Replacement Contractors.
- 32.8 Upon termination, this Contract Period shall be deemed to have expired but such termination to be without prejudice to any right of action or remedy which shall have or shall thereupon accrue to the Council and where appropriate the Council shall be entitled to recover the amount of any resultant loss from the Contractor.

33. EXIT AND HANDOVER ARRANGEMENTS

- 33.1 The Contractor shall not charge the Council or any Replacement Contractor for any expenditure incurred howsoever in carrying out the handover arrangements as set out in this Clause 33.
- 33.2 The plan for the orderly handover of the Services to the Council or its Replacement Contractors following termination or expiry of this Contract shall include:
- 33.2.1 the cessation of use of the Council's Data and the handing over to the Council of a complete and uncorrupted version of all Council Data relating to the performance of the Services in its possession custody or control either in its then current format or in a format nominated by the Council (in which event the Council shall reimburse to the Contractor the Council's reasonable data conversion expenses) whether such Council Data is on hard copy or on a disk or on any computer systems
 - 33.2.2 the handover to the Council of all records documentation and other information relating to the performance of the Services including without limitation:-

33.2.2.1 correspondence with end users

33.2.2.2 correspondence with sub-contractors, the Council's service departments end users and any other relevant third party.

33.3 The Council reserves its right to assign or novate this Contract to any person or Replacement Contractor nominated by the Council. The Contractor shall use all reasonable endeavours to assign or novate in favour of the Council or to any person as may be designated for the purpose by the Council any equipment leases maintenance contracts and support contracts as the Council may designate which are relevant and necessary for the performance of the Services by the Council or a Replacement Contractor on the basis that no charges are payable by the Council or the Replacement Contractor for entering into the assignments or novations.

33.4 The Contractor shall use all reasonable endeavours to transfer all data in accordance with industry standard format (or any format reasonably specified by a Replacement Contractor) relating to the Services including without limitation requests for Services to be undertaken which have not been completed.

34. Clause Not Used

35. FORCE MAJEURE

35.1 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party, or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out all or a material part of its obligations under this Contract by that Force Majeure Event.

35.2 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party before the expiration of twenty-four (24) hours. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

35.3 Within forty-eight (48) hours, 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 facilitate the continued performance of this Contract.

35.4 If appropriate terms are not agreed on or before the date falling twenty (20) Working Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract either Party may terminate this Contract in writing with immediate effect.

36. INDUSTRIAL ACTION

36.1 The Contractor shall give the maximum possible advance warning of prospective industrial action by the Contractor's Staff or other industrial disputes likely to affect the performance of this Contract adversely.

36.2 In the event that:

36.2.1 industrial action is taken by any Staff of the Contractor such as that the provision of the Services are, in the opinion of the Council, materially disrupted;
or

36.2.2 action is taken by the Contractor so as to prevent its Staff from providing the Services the Council reserves the right to make alternative arrangements for the provision of the Services and to charge the Contractor for any difference in resultant cost or terminate this Contract by notice in writing to the Contractor.

36.3 In the event that industrial action is taken by Staff of the Council the Contractor shall make every attempt to ensure that its Staff continue to provide the Services and the Council shall meet the Contractor's reasonable and proper additional costs incurred in so maintaining the Service in these circumstances.

37. RE-TENDERING INFORMATION

The Contractor shall forthwith upon the request of the Council's Contract Manager, supply to the Council any information reasonably specified by the Council as being necessary for the re-tendering of this Contract.

G. DISPUTES AND LAW

38. DISPUTE RESOLUTION

38.1 Both Parties shall use all reasonable efforts to resolve within the Contract any dispute between them with respect to any matter relating to the Contract. Please refer to the Escalation Procedure as outlined in Clause 62 (Escalation Procedure).

38.2 If either Party considers that the other has failed to comply with the terms of the Contract then, unless it is considered sufficient to lead to a termination of the Contract, the Parties shall endeavour to agree a plan and time-scale of corrective action. If the dispute or disagreement cannot be resolved the remedies available under the Contract to either Party may be invoked.

39. LAW AND JURISDICTION

Subject to Clause 38 (Dispute Resolution), the parties irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Contract and the legal relationship established by this Contract.

40. CHANGE IN LAW

40.1 The Contractor shall take all steps reasonably necessary to ensure that the Services are performed in accordance with the terms of this Contract following any Change in Law.

40.2 General Change in Law:

The Contractor shall comply with any General Change in Law at the Contractor's sole risk and cost.

40.3 Qualifying Change in Law

If a Qualifying Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

40.3.1 any necessary change in the Services and the Price of this Contract

40.3.2 whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law

- 40.3.3 whether relief from compliance with the obligations is required, including the obligation of the Contractor to achieve the Commencement Date, milestones or to meet any service level requirements at any time.
- 40.4 As soon as practicable after any notification in accordance with Clause 40.3 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Change in Law, including:
- 40.4.1 providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors
- 40.4.2 demonstrating that a foreseeable Qualifying Change in Law had been taken into account by the Contractor before it occurred;
- 40.4.3 giving evidence as to how the Qualifying Change in Law has affected the cost of providing the Services; and
- 40.4.4 demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.
- 40.5 Any increase in the Price or relief from the Contractor's obligations agreed by the Parties pursuant to this Clause 40 shall be implemented in accordance with Clause 21 (Amendments Variations and Change Control).

41. LEGAL PROCEEDINGS

- 41.1 If requested to do so by the Council's Contract Manager the Contractor shall provide to the Council within the timescale set by the Council's Contract Manager any relevant information (including but not limited to documents and statements from the Contractor's Staff) in connection with any legal inquiry dispute resolution or Court proceedings in which the Council may become involved or any relevant Council internal disciplinary hearing arising out of the provision of the Services or the Contractor's presence on any of the Council's Premises and shall give evidence in such inquiries arbitration or proceedings or hearings.
- 41.2 Where the Contractor or any of its Staff become aware of any incident accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services it shall notify the Council's Contract Manager immediately in writing. Such notification shall include all relevant information to enable the Council's Contract Manager to investigate the matter fully.
- 41.3 If requested to do so by the other, a Party shall provide, at no cost to the recipient, any relevant information in connection with any legal enquiry, relevant disciplinary hearing, dispute resolution or Court proceedings in which it may become involved arising out of the provision of the Services under this Contract.
- 41.4 The Contractor shall indemnify and keep indemnified the Council against all and any liabilities incurred by reason of the Contractor's failure to meet the timescale specified by the Council in accordance with Clause 41.

42. LOCAL GOVERNMENT OMBUDSMAN

- 42.1 In the event of a complaint to the Commission for Local Administration in England (the "Local Government Ombudsman") involving activities the subject of this Contract, the Contractor shall give to the Council and to the Local Government Ombudsman every assistance in the investigation of the complaint; and

- 42.2 Where any investigation by the Local Government Ombudsman takes place the Contractor shall:
- 42.2.1 provide any information requested in the timescale specified;
 - 42.2.2 attend any meetings as required and permit its Staff to attend;
 - 42.2.3 promptly allow access to an investigation of any documents deemed to be relevant;
 - 42.2.4 allow itself and any Staff deemed to be relevant to be interviewed;
 - 42.2.5 allow itself and any Staff to appear as witness in any ensuing proceedings; and;
 - 42.2.6 co-operate fully and promptly in every way required by the Local Government Ombudsman during the course of that investigation.
- 42.3 No additional payment shall be made to the Contractor for performing the requirements set out in this Clause 42.
- 42.4 Where any financial redress or other compensation is ordered by the Local Government Ombudsman in any investigation arising directly or indirectly out of the provision of the Services or any other action or omission by the Contractor or its Staff, then the Council shall be entitled to recover the cost of that financial redress or other compensation from the Contractor.

H. STATUTORY OBLIGATIONS AND REGULATIONS

43. EQUAL OPPORTUNITIES

- 43.1 In the performance of the Services, the Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, belief, disability, sexual orientation, age, human rights or otherwise) in employment and shall have regard to other official guidance and code of practice in relation to promotion of equality in employment.
- 43.2 The Contractor shall take all reasonable steps to secure the observance of Clause 43.1 by its Staff employed in the execution of this Contract:
- 43.2.1 The Contractor shall have an equal opportunities policy approved by the Council or shall have adopted the Council's own equal opportunities policy and procedures which is available on the Herts Direct Website as may be amended from time to time and notified to the Contractor
 - 43.2.2 The Contractor shall provide such information as the Council may reasonably require for the purpose of assessing the Contractor's continued compliance with this Clause 43.
- 43.3 If any Court or tribunal, or the Equality and Human Rights Commission (or any other Commission promoting equal opportunity) should make any finding of unlawful discrimination against the Contractor, then the Contractor shall immediately inform the Council of such a finding and the Council shall have the right to terminate this Contract if, having discussed the matter with the Contractor, it is of the opinion that the actions of the Contractor leading up to the finding were sufficiently serious as to undermine its compliance with Clause 43.1 above.

- 43.4 In the event that the Council does not exercise its right of termination under Clause 43.3 the Contractor shall discuss with the Council the appropriate steps the Contractor needs to take to prevent repetition of the unlawful discrimination and shall provide the Council with details of any such steps taken.
- 43.5 In addition to Clauses 43.1 and 50 (Observance Of Statutory Requirements) of this Contract, the Contractor shall comply with the National Minimum Wage Act 1998 (as amended) in relation to the payment of its Staff.

44. HEALTH AND SAFETY

- 44.1 In relation to the Contractor's Staff, the Contractor shall at all times comply with the requirement of the Health and Safety at Work Act 1974 and any other act, order pertaining to the health and safety of employees and others who may be affected by the Contractor's acts or omissions in providing the Services under this Contract and shall require that any sub-contractors likewise comply.
- 44.2 The Contractor shall comply with all health and safety requirements affecting the Premises. He shall take full responsibility for the adequacy and safety of all operations and methods adopted in the performance of the Service and the acts of its Staff. The Contractor shall notify the Council in writing if any method or practice set out in the Specification shall be or shall become an unsafe method of practice.
- 44.3 The Contractor shall throughout the Contract Period have full regard for the safety of all persons, and shall keep the Premises, stores and Equipment (so far as the same shall be under his control) in an orderly state appropriate to the avoidance of danger to all persons, and shall provide and maintain at his own cost adequate warning signs when and where necessary or required by the Council or by any competent statutory or other authority for the protection or for the safety and convenience of the public or others.
- 44.4 The Council reserves the right to suspend the provision of the Services in whole or in part without paying compensation if and whenever the Contractor is, in the reasonable opinion of the Council, in contravention of the Health and Safety at Work Act 1974 and provisions within this Clause 44.

45. THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

No person who is not a Party to this Contract shall have any right to enforce any term of this Contract, which expressly or by implication, confers a benefit on him without the prior consent in writing of both Parties. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contract (Rights of Third Parties) Act 1999.

46. FREEDOM OF INFORMATION

- 46.1 The Contractor acknowledges that the Council is subject to the requirements under the Freedom of Information Act 2000 (the "Act") and the Environment Information Regulations 2004 (the "Regulations") and shall cooperate with the Council (at the Contractor's expense) to enable the Council to comply with these information disclosure requirements.
- 46.2 The Contractor shall give reasonable assistance to the Council to comply with the Act and the Regulations, The Contractor shall not do any act either knowingly or recklessly that would cause the Council to be in breach of the Act and Regulations.
- 46.3 In particular, the Contractor shall supply all such information to the Council (together with reasonable assistance to locate the same) which are needed by the Council to comply

with its obligations under the Act and Regulations within a timescale to be agreed on a case by case basis, but in any event, not to exceed the timescale that the Council must comply with as defined in the Act and/or Regulations.

- 46.4 Notwithstanding the provisions of Clause 56 (Confidentiality) the Council shall have the discretion to disclose any information which is the subject of this Contract to any person who makes a request under the Act and/or Regulations and which, in the opinion of the Council, it has to disclose to discharge its responsibilities under the Act and/or Regulations.
- 46.5 When exercising its right under Clause 46.4 above, the Council shall consult the Contractor (and may take account of any reasonable suggestions made by it).
- 46.6 The Contractor shall advise the Council of any information that it wishes to publish that relates to the Services so that the Council may maintain its publication scheme under the Act and Regulations.
- 46.7 The Contractor shall advise the Council of any requests for information received by the Contractor where the information requested is subject to the Services provided under this Contract and shall follow the Council's access procedures in fulfilling the request.
- 46.8 The Contractor shall be required to follow all Council processes and procedures that provide for compliance with the Act and Regulations where information held is subject to the Services.

47. RE-USE OF PUBLIC SECTOR INFORMATION

- 47.1 The Contractor acknowledges that the Council has legal responsibilities to allow re-use of public sector information in accordance with the Re-Use of Public Sector Information Regulations 2005.
- 47.2 The Council shall not authorise re-use of information which is exempt from disclosure under the Freedom of Information Act 2005.
- 47.3 The Council shall not authorise re-use of information where the Contractor owns the intellectual property rights in that information.
- 47.4 Where information is jointly owned by the Council and the Contractor and it is impossible to identify the intellectual property right elements owned by each the Council shall obtain the consent of the Contractor before authorising re-use.

48. BEST VALUE

- 48.1 The Contractor acknowledges that the Council is subject to Best Value Duty and undertakes to assist the Council in achieving its Best Value Duty in relation to the Services as required under the Local Government Act 1999 (as amended from time to time).
- 48.2 Pursuant to Clause 48.1, the Contractor shall throughout the Contract Period and in accordance with its obligations under this Contract, provide a service that represents value for money.

49. WHISTLEBLOWING

- 49.1 The Contractor confirms that the Council's Contract Manager is authorised as a person to whom the Contractor's Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of its Staff making a protected

disclosure (as defined by the said Act) shall not be subjected to any detriment and its Staff will be made aware of this provision. The Contractor further declares that any provision in any contract purporting to preclude a member of its staff from making a protected disclosure is void.

- 49.2 The Contractor shall review on an annual basis its Whistleblowing policy and procedure in accordance with the Council's Whistleblowing policy and procedure.

50. OBSERVANCE OF STATUTORY REQUIREMENTS

- 50.1 The Contractor shall at all times deliver the Services in accordance with the Law and other provisions to be observed and performed in connection with the Services. Upon becoming aware of the same, the Contractor shall notify the Council of any breach of any statutory or other provision relating in any way to the provision of or connected with the Services.

- 50.2 The Council reserves the right to suspend the provision of the Services in whole or in part without paying compensation if and whenever the Contractor is, in the reasonable opinion of the Council, in contravention of the Law including those referred to in this clause or at any time enacted or notified to the Contractor during the course of this Contract. The Council will consider any representation made by the Contractor in relation to this clause.

- 50.3 If the right reserved in Cause 50.2 is exercised then the Council may employ and pay a Replacement Contractor to provide the Services required and, where appropriate, may recover from the Contractor any additional costs in so doing.

- 50.4 The Contractor and its Staff, when present on the Council's Premises for the purposes of providing the Services shall comply with any safety regulations, rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time and any other instructions of the Council and shall in all respects comply with all relevant health and safety legislation.

- 50.5 Without prejudice to the particularity of the foregoing or the particularity of the other Conditions of Contract both Parties shall comply with all requirements of the Law to be observed and performed in connection with the Services and a defaulting Party shall indemnify the non-defaulting Party against all actions, claims, demand, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach of this Clause 50.

51. NOT UESED

52. ENVIRONMENTAL REQUIREMENTS

The Contractor shall when working on the Premises perform this Contract in accordance with the Council's Environmental Policy which is to conserve energy, water, wood, paper and other resources to reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases volatile organic compounds and other substances damaging to health and the environment.

53. HUMAN RIGHTS ACT 1998

- 53.1 In the performance of the Services the Contractor shall comply with the Human Rights Act 1998 as if it was a 'Public Authority' within the meaning of that legislation.

- 53.2 If a third party threatens or commences proceedings or complaint against the Council on the grounds that there has been a breach of any person's rights under the Human Rights

Act 1998 in connection with the subject of this Contract the Council and the Contractor shall use all reasonable endeavours to co-operate so as to enable the Council:

53.2.1 to achieve the aim of successfully averting or defending the proceedings or complaint; and/or

53.2.2 to comply with any order, judgement or direction made pursuant to the same by any duly authorised authority.

53.3 The Council may additionally in its discretion determine such modifications to this Contract as may be required to enable the Council to comply with the provisions of the Human Rights Act 1998 and the Contractor shall forthwith comply with such modifications.

53.4 The Contractor hereby undertakes to indemnify the Council against all such actions, claims, costs and damages pursuant to a claim under this Clause 53.

54. SAFEGUARDING IN EMPLOYMENT / NOT USED

54.1 Safeguarding

54.1.1 The Contractor acknowledges that the Council has legal responsibilities under the Safeguarding Vulnerable Group Act 2006 (the "SVG Act") (as amended from time to time) and in providing the Services under this Contract, the Contractor warrants that it will comply with all requirements under the SVG Act and all other relevant legislation in relation to safeguarding vulnerable group.

54.1.2 In addition to Clause 54.1.1 the Contractor warrants that it will comply with the Council's Adult and Child Safeguarding procedures in relation to this Clause 54.1 details of which are available on the Herts Direct Website (www.hertsdirect.org/yrccouncil/hcc/acswwww/acspolicies/safeadults/) and (www.hertssafeguarding.org.uk/) as may be amended from time to time and notified to the Contractor.

54.1.3 The Contractor shall give reasonable assistance to the Council to comply with the SVG Act and shall not do any act either knowingly or recklessly that would cause the Council to be in breach of the SVG Act.

54.1.4 Pursuant to Clause 54.1 the Contractor shall nominate and name a designated senior officer or manager and make arrangements during the provision of the Services under this Contract to ensure that it complies with the provisions of the SVG Act.

54.1.5 The designated senior officer or manager shall comply with the provisions of working together for safeguarding children, young people and vulnerable adults in dealing with allegation of abuse made against the Contractor's employee who work with children, young people and vulnerable adults.

54.1.6 The Council reserves the right to visit the Contractor's organisation to audit, inspect and monitor the Contractor's compliance with this Clause 54.1.

54.2 Criminal Records Bureau ("CRB")

54.2.1 It is the Council's policy that all staff and volunteers must have satisfactory Enhanced CRB checks and references prior to appointment. This applies also to all organisations that work in partnership with the Council:

- 54.2.1.1 who work directly and regularly with children, young people or vulnerable adults or
 - 54.2.1.2 who provide advice regularly to children, young people or vulnerable adults over the telephone or via electronic communication including the internet and text messaging which relates to their physical, emotional or educational well-being or
 - 54.2.1.3 who are involved in establishing and operating the Database containing basic information about children, young people or vulnerable adults in England and those whose employment requires them to access the Database.
- 54.2.2 The Contractor shall ensure that before a Named Employee begins to perform any of the Services:
- 54.2.2.1 each Named Employee is questioned as to whether he or she has any convictions, reprimands, final warnings or any other relevant information which makes them unsuitable to perform any of the Services; and
 - 54.2.2.2 the results are obtained of a check of the most extensive available kind made with the Criminal Records Bureau enhanced in accordance with Part V of the Police Act 1997 in respect of each Named Employee in accordance with the Council's policy.
- 54.2.3 The Contractor shall use one of the following methods for the advice, processing and storage of CRB checks:
- 54.2.3.1 through the Council's CRB Umbrella Body
 - 54.2.3.2 by the Contractor directly (if CRB registered)
 - 54.2.3.3 through an external umbrella Body.
- 54.2.4 Where the Contractor uses the Council's CRB Umbrella Body the Contractor shall ensure that no person who discloses any convictions, cautions, reprimands, final warnings or other relevant information or who is found to have any information following the results of a CRB check, is employed or engaged by the Contractor or on the Contractor's behalf without the Council's prior written consent (such consent not to be unreasonably withheld or delayed).
- 54.2.5 Where the Contractor's CRB checks are processed either directly by the Contractor or by an umbrella body other than the Council the Contractor shall comply with and observe all relevant legislation in relation to CRB checks and follow all recommendations and general guidance issued by any Central Government Department on CRB checks when deciding whether the outcome of the CRB check is satisfactory and whether the individual concerned is suitable to work with children, young people or vulnerable adults.
- 54.2.6 The Contractor shall disclose to the Council the CRB record for each Named Employee and the Contractor shall store the record securely within the Contractor's organisation in accordance with the Data Protection Act 1998. Where the disclosure information is on a CRB certificate, a risk assessment should be kept by the Contractor.
- 54.2.7 The Council reserves the right to request additional CRB checks are carried out if there is any doubt about the outcome of any individuals check.
- 54.2.8 The Contractor through monitoring of its compliance with this Clause 54.2 shall ensure that the Council is kept advised at all times of any member of Staff who, subsequent to

his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Contractor (or any employee of a sub-contractor involved in the provision of the Services).

- 54.2.9 The Council reserves the right to visit the Contractor's organisation to audit and check disclosure information as specified in Clause 54.2.6 to ensure and confirm that evidence of other pre-employment checks (including volunteers) are up to date.
- 54.2.10 The use of "relevant information" in this Clause 54.2 means all information relating to CRB checks and or CRB disclosures. For the avoidance of doubt reference to Council's consent in this Clause 54.2 shall be consent made by the Council's Contract Manager and received from the Council's designated Safe Staffing Team.
- 54.2.11 The Contractor agrees to indemnify the Council against all claims, actions, damages, legal costs, proceedings, expenses and any other liabilities whatever arising that the Council incurs as a result of the Contractor's failure to comply with this Clause 54.2.

54.3 Sub-Contractors

In the event that the Contractor enters into any sub-contract in connection with this Contract, it shall impose obligations on its sub-contractor in the same terms as those imposed on it pursuant to this Clause 54 and shall procure that the sub-contractor complies with such terms. The Contractor shall indemnify the Council and keep the Council indemnified in full from and against all loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of the sub-contractor to comply with such terms.

I. PROTECTION OF INFORMATION

55. DATA PROTECTION

- 55.1 Each party shall comply with the requirements of the Data Protection Act 1998 in relation to the provision or use of the Services, and shall not knowingly or negligently take any action that might lead to a breach by the other party.
- 55.2 The Provider shall only use any and all information which is given or made available to it by the Council under the provisions of the Data Protection Act 1998 for the provision of the Services and for no other purposes whatsoever at any time.

56. CONFIDENTIALITY

56.1 Each Party:

- 56.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- 56.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

- 56.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with this Contract:
- 56.2.1 is given only to such of its Staff and professional advisors or consultants engaged to advise it in connection with this Contract as is strictly necessary for the performance of this Contract and only to the extent necessary for the performance of this Contract
- 56.2.2 is treated as Confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of this Contract.
- 56.3 The Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor's confidentiality obligations under this Contract.
- 56.4 The Contractor shall not use any Confidential Information it receives from the Council otherwise than for the purposes of this Contract.
- 56.5 The provisions of Clause 56.1 to 56.3 shall not apply to any Confidential Information received by one Party from the other:
- 56.5.1 which is or becomes public knowledge (otherwise than by breach of this Clause 56)
- 56.5.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party
- 56.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure
- 56.5.4 is independently developed without access to the Confidential Information; or
- 56.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom of Information Act, 2000 or the Environmental Information Regulations 2004 pursuant to Clause 46 (Freedom of Information).
- 56.5.6 Nothing in this Clause 56 shall prevent the Council disclosing any Confidential Information:
- 56.5.6.1 for the purpose of the examination and certification of the Council's accounts; or
- 56.5.6.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency, and effectiveness with which the Council has used its resources; or
- 56.5.6.3 to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is Confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or

56.5.6.4 to any person engaged in providing any services to the Council for any purpose relating to or ancillary to this Contract provided that in disclosing information the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

56.6 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

56.7 In the event that the Contractor fails to comply with this Clause 56 the Council reserves the right to terminate this Contract in writing with immediate effect.

56.8 The Council may terminate this Contract for the Contractor's failure to comply with this Clause 56.

57. INTELLECTUAL PROPERTY RIGHTS

57.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns:

57.1.1 furnished to or made available to the Contractor by the Council shall remain the property of the Council;

57.1.2 prepared by or for the Contractor for use, or intended use, in relation to the performance of the Contract shall belong to the Council and the Contractor shall not, and shall procure that the Contractor's Staff shall not, (except when necessary for the implementation of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Contract) which the Contractor may obtain in performing the Contract except information which is in the public domain.

57.2 The Contractor shall obtain Approval before using any material, in relation to the performance of this Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the rights grants to the Council a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.

57.3 It is a condition of this Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the expiration of this Contract, on written demand indemnify and keep indemnified the Council against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to:

57.3.1 designs furnished by the Council;

57.3.2 the use of data supplied by the Council which is not required to be verified by the Contractor under any provision of this Contract.

- 57.4 If in connection with the Service the Contractor or any of its staff develop any idea which may be capable of patent or registered design protection or any like protection or registration, the Contractor shall inform the Council forthwith in writing. The Council may wish to make an application to register such idea and, at the request of the Council, the Contractor shall give the Council all such assistance as it reasonably requests to obtain registration of those rights in the name of the Council PROVIDED THAT if the Contractor incurs any reasonable out-of-pocket expenses in complying with this clause those expenses shall be reimbursable.
- 57.5 Pursuant to Clause 57.4 above:
- 57.5.1 The Contractor shall keep confidential the existence of and all details of any idea which may be capable of registration as set out in Clause 57.4 above and shall not disclose the same to any third party or, without the prior written consent of the Contract Manager, put the idea into use.
- 57.5.2 The Council shall be the sole proprietor of any idea which is the subject of Clause 57.4 and no payments shall be due from the Council to any third party in respect of the idea except that the Contractor shall be entitled to a share in the profits of any exploitation of any registered rights (other than in connection with the Service) which the Council shall agree to pay to the Contractor.
- 57.5.3 The Contractor shall ensure that all its staff waive any rights that they may have in the nature of moral rights in relation to any work which will inhibit the free use of the work by the Council PROVIDED THAT this Clause 57 does not apply to those rights which are not capable of exclusion by contractual provisions or the rights specifically granted under this Contract.
- 57.6 Nothing in this Contract shall in any way derogate from the rights of the Council under any legislation relating to patents, copyrights, registered design rights or design rights.
- 57.7 Notwithstanding the Council's ownership of all intellectual property rights as provided by this Clause 57.4, the Council agrees to share equally with the Contractor all royalties received from any commercial exploitation of such rights.
- 57.8 The Council shall notify the Contractor in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- 57.8.1 shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
- 57.8.2 shall take due and proper account of the interests of the Council; and
- 57.8.3 shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).
- 57.9 The Council shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of this Contract.
- 57.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Contract or in the reasonable opinion of

the Contractor is likely to be made, the Contractor may at its own expense and subject to the Approval of the Council's Contract Manager (not to be unreasonably withheld or delayed) either:

- 57.10.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or
- 57.10.2 procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council.
- 57.11 At the termination of this Contract the Contractor shall immediately return to the Council all materials, work or records held, including any back-up media.
- 57.12 The provisions of this Clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

58. AUDIT RIGHTS

- 58.1 The Contractor shall permit or procure permission for any authorised representative of the Council (including the Council's external auditors) to have reasonable access for audit purposes to information Premises or the equipment used in the provision of the Services.
- 58.2 Access shall include (without limiting the generality of the foregoing):
 - 58.2.1 reasonable access to those Staff of the Contractor who are engaged in the provision of the Services;
 - 58.2.2 inspection of the arrangements being made by the Contractor to comply with its obligations under this Contract;
 - 58.2.3 access to such financial and other records as are kept as part of the provision of the Services by the Contractor as may be reasonably required from time to time to enable the Council to verify the sums due and payable under the terms of this Contract.
- 58.3 Access may be at any time without notice provided there is good cause for access without notice and provided that the Council's authorised representatives shall comply with all reasonable requirements of the Contractor for the purpose of protecting the confidentiality of the information of third parties and no information will be divulged to any third party save in pursuance of statutory obligations.
- 58.4 The Contractor shall provide such information documents and reports in the form as may be reasonably required by the Council.
- 58.5 The Contractor shall keep and maintain for a period of [six (6) years] after the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of this Contract including Services provided under it, all expenditure reimbursed by the Council and all payments made by the Council. For the avoidance of doubt this clause is in addition to any legislative requirement and does not negate the need for any such retention of records.

59. PUBLICITY

- 59.1 Except with the Approval of the Council, the Contractor shall not make any press announcements or publicise this Contract or any part thereof in any way.
- 59.2 The Contractor shall take reasonable steps to ensure the observance of the provisions of Clause 59.1 by all its' Staff.
- 59.3 The provisions of this Clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

60. MANAGEMENT INFORMATION

- 60.1 The Contractor shall supply the Council with regular information on the performance of this Contract and such information to be provided as required.
- 60.2 The Council shall have the right to vary its information requirements and may do this by invoking the Change Control Procedure.

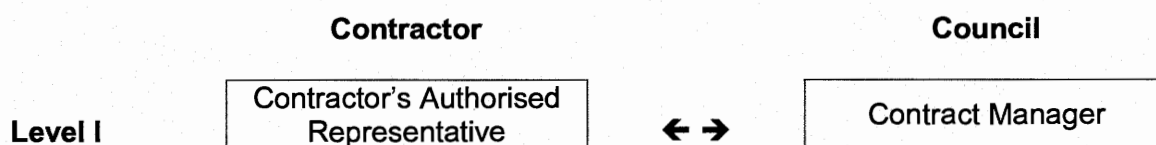
61. RECORDS

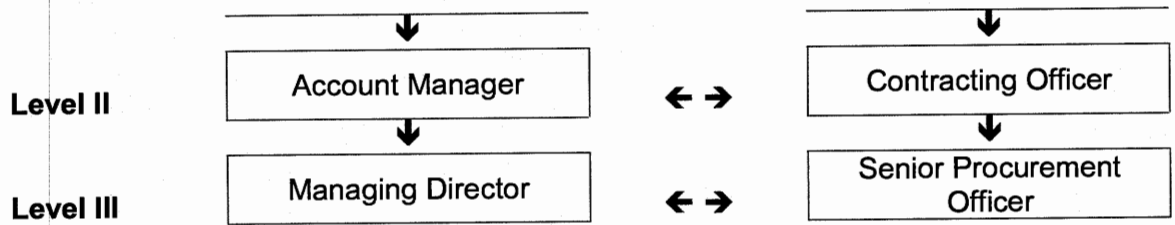
- 61.1 The Contractor shall maintain current and accurate Records of all work carried out in the provision of the Services and shall ensure that these Records shall be available for inspection by an authorised representative of the Council at all reasonable times.
- 61.2 The Contractor shall maintain security safeguards against the destruction or loss or unauthorised use or alteration of Records irrespective of the storage media which are under the Contractor's control as part of the Services. Such safeguards shall include an obligation on the Contractor to ensure that access to Records is only obtained by such Council staff as may be specifically designated by the Council's Contract Manager.
- 61.3 If any Records are accidentally or wilfully destroyed otherwise than by the Council or on the authorisation of the Council in the event that the Contractor does not put in hand a method for reinstatement or replacement of such Records within seven (7) Working Days of receipt of a notice from the Council then without prejudice to the Council's other rights at law the Contractor shall reimburse the Council's reasonable costs in restoring such Records such costs to be accounted for during the term of this Agreement by way of rebate in subsequent invoices for the sums paid pursuant hereto.
- 61.4 Immediately upon expiry or termination of this Contract for any reason whatsoever the Contractor shall at the sole option of the Council either return to the Council in an agreed form timescale and location in Hertfordshire or destroy all Records and all copies thereof.

J. CONTRACT SPECIFIC CONDITIONS

62. ESCALATION PROCEDURE

Complaints and disputes will be resolved as early as possible by the Contractor's Authorised Representative and the Council's Contract Manager. In the event that they are not able to resolve the problem in a mutually acceptable manner, the dispute will be escalated. The Contractor shall observe the following escalation scheme for the handling of complaints and disputes:





63. Not Used

64. Not Used

65. Not Used

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Schedule 1

Specification

Bids to the DfE for 3 primary age academies (free schools) in Hertfordshire

To promote bids to the Department for Education (DfE) to secure operational 2 f.e. primary academies by September 2014 at the following locations:

- 1) The 'Lanchester Building' which is part of the West Herts College Campus, Hempstead Rd, Watford, WD17 3EZ
- 2) A site at Ascot Road, Watford, WD18 8UQ
- 3) The former Jupiter Drive primary School site, Jupiter Drive, Hemel Hempstead, HP2 5NT

In doing so the Company will:

- Maintain the quality of leadership of the company identified in the bid made to HCC
- Name one person to liaise with the county council's contract manager across all three bids , providing reports on each school proposal prior to a monthly monitoring meeting
- Follow all DfE bidding and approvals processes that obtain at the time, to time
- Research community needs
- Engage with and secure appropriate parental/community support for the bid, ensuring that the bids reflect the demography of those communities e.g. ethnicity and the needs of the vulnerable members of those communities
- Engage positively with the primary and secondary headteacher groups within the relevant areas about the bid proposals
- Promote bids with partners acceptable to the LA, which will enhance and not negatively impact on the LA's established relationships
- Produce high quality, non-interdependent bids
- Bid for capital funding for the development of the school (to enable the local authority to develop the sites and buildings) using information supply by/via HCC.
- Appoint principals to and secure staff for the schools

This is subject to DfE approval and Contract extension; the company will use its best endeavours to: -

- Prepare to open the schools successfully and on time
- Provide successful schools which improve high levels of educational achievement that meet the needs of the local communities they serve
- Achieve the right number of additional places required at each school
- Increase choice and diversity in educational provision with the relevant local communities.

The above 4 outcomes are related to the preparation to open phase, so they relate to a possible contract extension.

Monitoring

Monitoring will take the form of monthly progress reports and monitoring meetings with the Contract Manager

Stage 1 HCFSC – work schedule June to December 2012

ref	action	date
1		June 2012
1a	Work with HCC to clarify the brief for each school	June 2012
		Jul/Aug 2012
1c	Secure strategic partnership arrangements for example, UH, HCC, local business, FE, schools	July/August
	Work with the DfE to agree the project approach and structure	July
		Sept 2012
1d	Establish governance arrangements for the three school project forming an executive group (forerunner to the West Herts Community Free School Trust) to oversee and co-ordinate the three school project	September
1b	Identify leader, mentor and co-ordinator for each core group	September
1b	Form a core group to lead each proposal that has roots into the local community and the right range of skills, experience and influence (skills and experience - finance, legal, HR, education)	September
1e	Establish meeting pattern and meeting places	September
6c	Understand guidance for applicants	September
		October
2a	Build a vision based on HCFS but tailored to local needs	October
2b	Prepare and have printed the consultation document setting out the vision and seeking support	October
4a	Hold open meetings for a range of local stakeholders in order to explain the vision and proposal	October
4b	Build community engagement – parents, local residents, local schools and early years' providers, local community leaders	October
5a	Set up website	October
5b	Set up facebook page	October
5c	Build a relationship with the local press	October
5d	Run events to secure sign-up from local parents with children who will enter the reception class in 2014 or 2015 (now needs to be parents who would put the school as their first choice and 50% of total number for the 2 years is needed)	October
5e	Compile parent contact list and recruit parent friends and prospective governors	October
3a	Work with HCC appointed design team to shape accommodation to the school visions	October/November
3b	Work with HCC to build the case for capital funding for inclusion in the free school application	October
		November/December
4c	Secure support of local politicians and the local MP	November
7a	Clarify company structure and arrangements for delegated powers for each school	November
7b	Agree admission arrangements with LA	November
	Prepare submissions (sections set out below)	1 st November to 12 th December
7c	Set out outline of the school organisation	1 st November to 12 th December
7d	Set out educational vision	1 st November to 12 th December

7e	Set out education plan: admissions, curriculum, teaching and learning, pupil development and achievement, behaviour and attendance and community engagement	1 st November to 12 th December
7f	Set out evidence of demand and marketing plan	1 st November to 12 th December
7e	Set out arrangements for formal consultation	1 st November to 12 th December
7f	Set out the organisational capacity and capability of the company including arrangements for hiring the principal, governance, financial oversight, leadership and staffing	1 st November to 12 th December
7g	Set out issues relating to the premises and site including the case for capital funding	1 st November to 12 th December
7h	Set out a five year financial plan	November
7i	Send details of all members and directors for due diligence checks	December 12th
	Submit applications for UH critique	December 12th
	Prepare single submission and send to DfE	TBA

Stage 2 - This stage of the service specification and payments relating to this, are subject to DfE approval to proceed.

8	Securing high quality leadership	
8a	Prepare to recruit principal	June 2013
8b	Recruitment process for principal in the Autumn for access to the best candidates and early engagement	October 2013
9	Gaining approval	
9a	Attend set-up with DfE	October 2013
9b	Establish project steering group	November 2013
9c	Appoint project managers	November 2013
9d	Agree early costs (stage that DfE take on responsibility for costs - nothing paid retrospectively)	December 2013

Stage 3 - 'Preparation to Open' stage is subject to a Contract Extension and Subject to DfE approval

10	Preparation to open	
10a	Run the formal consultations	November 2013 to January 2014
10b	Work with DfE to put in places all policies, procedures and processes	January to July 2014
10c	Work with LA to coordinate admissions	January to April 2014
10d	Put in place and train governing bodies	May 2014
10e	Run induction events for families and children	April to July 2014
10f	Prepare for readiness to open interview and Ofsted pre-opening inspection	June/July 2014
10g	Prepare the school for opening	August 2014

HCFSC put in writing to the HCC Contract Manager who their sub contractors will be from the outset regarding each action.

The timescales set out in the work schedule may be subject to change in accordance with DfE guidance.

Schedule 2 – Financial Schedule:

Summary Stage Payments		£
Stage 1	5 days from Contract Signed	[REDACTED] First interim Instalment
	15 th October 2012	[REDACTED] Second interim instalment
	Dec-12 – date Bid is Submitted	[REDACTED] Milestone: Submission of bid
Stage 2 of the service specification and payments relating to this, are subject to DfE approval to proceed.		
	Jun-13	[REDACTED] Third interim instalment
Stage 2 of the service specification and payments relating to this, are subject to DfE approval to proceed.		
	Dec-13	[REDACTED] Milestone: DfE approval
Contract Total		155,000
Stage 3- Subject to Contract Extension and DfE approval		
	Aug-14	25,000 Milestone: Readiness to Open
Contract Total with Extension		180,000

Invoices to be submitted to the HCC Contract Manager.

Schedule 3

Change Control Procedure

1. INTRODUCTION

During the period of any contract there will be times when there is a need to vary or change the terms of the contract. This schedule contains the framework for managing these Variations to the Contract.

Any work undertaken in connection with any proposed change to the Contract by the Contractor shall be undertaken entirely at the expense and liability of the Contractor.

Until such time as the change order has been signed by both Parties, the Contractor will continue to provide the Services in accordance with the Conditions of Contract.

2. PROCEDURE

The parties will meet to discuss the proposed change. The meeting to be minuted and all information required to support the change should be readily available to both parties.

Any negotiations or any other communications which may take place in connection with the proposed change should be documented as these factors will form the basis of the change to the contract.

Once the change has been agreed by the parties the Contract Manager will be responsible for completing the necessary documentation and the details to be included are as follows:

- the title of the proposed change;
- the originator and date of the proposal for the proposed change;
- the reason for the proposed change;
- full details of the proposed change;
- the variation to the price, if any, of the proposed change;
- details of the likely impact, if any, of the proposed change on other aspects of the contract.

Once completed two copies of the documentation should be sent to the Contractor for signing and returning to the Contract Manager within an agreed timescale. The Contract Manager will then sign and return one completed copy to the Contractor and retain one copy for his reference and the change will then form an addendum to the contract.

CHANGE CONTROL PROFORMA

Sequential Number: [] Title: []

Number of pages attached: []

WHEREAS the Contractor and the Council entered into a Contract for **Bids to the DfE for 3 primary age academies (free schools) in Hertfordshire** dated August 2012 (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

1. With effect from [date] the Original Contract shall be amended as set out below:

[Full details of any amendments to the Original Contract should be inserted here]

2. Save as herein amended all other terms and conditions of the Original Contract shall remain in full force and effect.

Signature: _____

for and on behalf of the Council

Name: _____

Title: _____

Date: _____

Signature: _____

for and on behalf of the

Contractor

Name: _____

Title: _____

Date: _____