

**MODEL TERMS AND CONDITIONS OF CONTRACT  
FOR  
THE CATERING SERVICE FOR  
NURSERY/PRIMARY/MIDDLE/SPECIAL SCHOOLS**

**THE MODEL TERMS AND CONDITIONS CONTAINED WITHIN THIS CONTRACT  
ARE BASED ON HERTFORDSHIRE COUNTY COUNCIL'S STANDARD  
CONTRACT TERMS**

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**THE PROVISION OF A CATERING SERVICE FOR  
NURSERY/PRIMARY/MIDDLE/SPECIAL SCHOOLS  
CONTRACT REF: HCL/NPMS/001**

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**THE PROVISION OF A CATERING SERVICE FOR  
NURSERY/PRIMARY/MIDDLE/SPECIAL SCHOOLS  
CONTRACT REF: HCL/NPMS/001**

**CONDITIONS OF CONTRACT**

**A. GENERAL PROVISIONS**

**1. THIS CONTRACT**

This contract comprises of Schedule 1 – the Specification, these terms and conditions and the signed Form of Agreement and any addenda thereafter.

**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 Parties authorised representatives.
- 2.3 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.
- 2.4 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.
- 2.5 The expression 'person' used in this Contract shall include (without limitation) any individual partnership, local authority or incorporated or unincorporated body.
- 2.6 In this Contract, the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa.
- 2.7 References to Clauses or Schedules shall be to Clauses and Schedules of this Contract.
- 2.8 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 Company.
- 2.9 In the event of any inconsistency or conflict between the main body of this Contract and the Schedules, the provisions of this Contract and then Schedule 1 (the Specification) shall prevail
- 2.10 In the event of a conflict (or any inconsistency) between the provisions of Clause 2.9 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 1<sup>st</sup> day of September 2013 and shall continue for a period of three (3) years thereafter until 31<sup>st</sup> August 2016 ("Initial Period") unless terminated earlier in accordance with the provisions of this Contract or extended by mutual consent of the Parties by giving at least two (2) Academic Terms prior notice in writing (or any other timescale agreed between the Parties).
- 3.2 Where the Parties agree a further extension after the Initial Period the provisions of this Contract between the School and the Company shall be the terms of the extended Contract, save for this Clause 3 and any Variations agreed between the Parties to apply to the extended contract.
- 3.3 Without prejudice to the above or any other provisions of this Contract, the Parties shall not be entitled to terminate this Contract during the Initial Period except for material breach.

### **4. ENTIRE AGREEMENT**

This Contract contains the whole agreement between the Parties in respect of the Service and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter. The Parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated into this Contract. Nothing in this Contract excludes liability for fraud.

### **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 specified 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 as specified in the Form of Agreement signed by the parties

### **6. USE OF SCHOOL'S CREST OR LOGO**

The Company shall not without the prior written Approval of the School use the School's crest either on its own or in combination with the Company's crest or logo nor cause or permit it to be used.

### **7. SEVERANCE**

If any provision of this Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract and shall not in any way affect any other circumstances of or the validity or enforcement of this Contract

**B. PROVISION OF THE SERVICES**

**8. THE PARTIES AUTHORISED REPRESENTATIVES**

- 8.1 The Parties shall each appoint a representative who will be the main point of contact for any communications between the Parties.
- 8.2 The Parties representatives shall exercise the functions allocated to them under this Contract. The Parties may from time to time remove and replace the respective representatives such removals or replacements being notified in writing to the other Party.
- 8.3 The Company shall provide to the School the name, telephone number and contact address for the Company's Authorised Representative and other Company Staff who may require admission in connection with this Contract to any premises occupied by or on behalf of the School. The Company Staff will be suitably identified as such on the School's Premises.
- 8.4 The School shall allow representation to be made by the Company before any of the Company's Staff is to be refused access to any premises occupied by or on behalf of the School.
- 8.5 Any Staff of the Company whose conduct places an end user at risk or might bring the School into disrepute shall be the subject of immediate investigation by the Company and dealt with to the satisfaction of the School which might direct that the employee be removed from activities in pursuance of this Contract.
- 8.6 The Company shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Company by the School for entry to any Premises owned by the School and shall only permit such keys, passes and other means of access to be used in accordance with the School's Contract Manager's instructions and then only to the extent required for the purposes of providing the Services.
- 8.6 The Company shall ensure that the School'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 School any cost of replacement and/or any reasonable security measures implemented as a direct result of such loss.

**C. FINANCIAL ARRANGEMENTS**

**9. CONTRACT PRICE**

- 9.1 The School shall pay the Price for the Service in accordance with this Contract.
- 9.2 Payment of the Price for the Service shall be made in accordance with the payment terms stated in Appendix 1 of Schedule 1 (the Specification).
- 9.3 All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which shall be charged in addition at the rate in force at the date any payment is required from the School.
- 9.4 If payment of any Price is not received by any due date, the Company shall be entitled (without prejudice to any other right or remedy):

- 9.4.1 to charge interest on the outstanding amount at the rate of two per cent (2%) per annum above the base lending rate of the Bank of England, accruing daily;
- 9.4.2 to require that the School make a payment in advance of any Service or part of the Service not yet supplied which shall be paid within 10 days of such demand (or if different) as specified in the Specification;
- 9.4.3 not to provide any further Service or part of the Service; and/or
- 9.4.4 not to provide any reports due on completion of the Service (until such payment is made).
- 9.4.5 All payments shall quote the Company's invoice number and other reference numbers.

## **9A Price Adjustment**

- 9A.1 The Company will normally submit prices to the Schools Forum in April or May in each year along with documentary evidence to support the Company's proposals for the Forum to agree. Any price changes will be rounded up to the nearest 5 pence for ease of presentation and implementation. Price changes will take effect from the 1st of September following and are expected to last for one year.
- 9A.2 In exceptional situations where overall food prices have risen by more than 8% as measured by the Commodity Food Price Index below the Company reserves the right to approach Schools Forum for an exceptional increase in the food component of the meal for the remainder of that school year.
- 9A.3 The documentary evidence will be based on the following Indexes

### Labour and Overhead Costs

– Consumer Price Index for labour (CPI<sub>L</sub>) affecting 66% of the price published by the Office of National Statistics

### Food Costs

- The Commodity Food price Index – affecting 34% of the price. published by the International Monetary Fund (IMF) Base 2005 = 100

The actual price change will be calculated by combining the changes in price of the components in relation to their weighting and then rounding up to nearest 5 pence

The formulae for the change of any index

$$\frac{\text{Current index (in April of current year)} - \text{Previous Index (April previous year)}}{\text{Previous Index}}$$

e.g. Calculation if

Current index 110; previous index 102  
- % increase is 7.8% in that index

And if this was the food element then

The increase in price relating to food is  $0.34 \times 7.8\% = 2.65\%$  on the overall price

A similar calculation would be performed using the labour cost index and then an overall calculation on the previous year's price done and then rounded to next 5 pence.

## **10. VALUE ADDED TAX**

- 10.1 The Services include the preparation and supply of meals from the Company and the supply of other services as described in Schedule 1 the Specification.
- 10.2 The Company will act as principal for the procurement of and payment for supplies, which will for VAT purposes, be deemed to be supplied by the Company to the School on the date when the supplies are delivered to the School and entered into stock.
- 10.3 The Company will act as agent for and on behalf of the School in the preparation of food and drink from the suppliers and in the onward provision of that to pupils. The Company agrees that other than expressly described elsewhere in this Clause 10 it shall have no duty to account to the School for any other fiduciary duties as an agent.
- 10.4 The Company will collate and hold records for the School of the total sales made to pupils and adults on the School's behalf and separately for total sales to adults and pupils from vending machines. It is the School's responsibility to give written notice to the Company of its VAT status and any special arrangements or apportionments it has agreed with HM Revenue and Customs relevant to those sales. The School will notify the Company as soon as reasonably possible if its VAT status changes. The Company acknowledges that it remains liable to account for and pay VAT to HM Revenue and Customs on supplies of the prepared food and drink to pupils and adults at the School when such VAT is properly due.
- 10.5 Any consideration due in respect of taxable supplies under this Contract is exclusive of VAT.
- 10.6 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.
- 10.7 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.
- 10.8 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.
- 10.9 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.

## **D. CONTROL OF THIS CONTRACT**

### **11. ASSIGNMENT AND SUBCONTRACTING**

- 11.1 The Parties shall not assign, novate or in any way dispose of this Contract or any part thereof except with the prior written Approval of the other Party.

- 11.2 The Company shall not sub-contract the whole or any part of this Contract to any person without the prior Approval of the School (such Approval not to be unreasonably withheld or delayed).
- 11.3 If the Company should sub-contract the provision of the Services or any part thereof to any person, that shall not relieve the Company from any liability or obligation under this Contract and the Company 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 Company.
- 11.4 Where the School 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.
- 11.5 Any change in the legal status of the School such that it ceases to be a School shall not, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the School.

## **12. VARIATIONS**

- 12.1 The terms of this Contract shall not be amended or varied except in writing and signed by the Parties authorised representatives.
- 12.3 Any Variations shall be communicated in writing by either Party's authorised representative to the other Party in accordance with the Notice provisions of Clause 5 (Notices). All Variations shall be in the form of an addendum to this Contract.
- 12.4 In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated and agreed in writing between the Parties.
- 12.5 The Company shall provide such information as may be reasonably required to enable such varied price to be calculated.

## **13. WAIVER**

No failure or delay by either Party in exercising any right, power or privilege under this Contract shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights and remedies provided by law.

## **14 REMEDIES FOR POOR PERFORMANCE**

- 14.1 If the Company commits a breach of this Contract which is capable of remedy, the School's Contract Manager shall notify the Company 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").
- 14.2 The Company shall produce the Action Plan within an agreed timescale. The School's Contract Manager may require specific amendments to the Action Plan.
- 14.3 Acceptance of the Action Plan will be confirmed in writing by the School's Contract Manager to the Company's Authorised Representative.
- 14.4 Improvements in performance will be monitored in accordance with the Action Plan and agreed timescale until the breach is remedied.

**15. NOT USED**

**16. CONTRACT MANAGEMENT**

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

16.2 The Company shall supply the School with regular information (as requested by the School) on the performance of this Contract as set out in Appendix 2 of Schedule 1 (the Specification) and such information to be provided as required.

16.3 Regular contract review meetings will be held between the Company and the School to monitor the Company's performance both on this Contract as a whole and against performance targets outlined in Appendix 2 of Schedule 1 (the Specification) of this Contract. The Company shall afford all necessary resources and facilities to allow the School to carry out its contract reviews and provide all reasonable information required.

**17. COMPLAINTS**

Where either Party has any complaints or issues which it wishes to discuss in relation to the Service, these should be, wherever possible, resolved through the normal day to day contacts or through the authorised representatives of both Parties in accordance with the escalation process in Appendix 3 of Schedule 1 (the Specification).

**E. INSURANCE AND LIABILITY**

**18. INSURANCE**

18.1 The Company shall procure appropriate and adequate level of insurance required in the catering industry to cover the provision of the Services.

18.2 The Company shall supply to the School upon request any relevant insurance policy or certificate from its insurers or brokers confirming that the Company's insurance policies are up to date.

18.3 If the Company fails to take out and maintain the insurance required under this Clause 18 then the School 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 School in respect of premiums therefore may be deducted by the School from any monies due or to become due to the Company under this Contract or such amount may be recoverable by the School from the Company as a debt.

**19. LIABILITY**

19.1 The Company warrants that it will use reasonable care and skill in performing the Service and represents that it has the full capacity and authority and all necessary consents to enter into and perform this Contract;

19.2 The Company expressly does not warrant that any result or objective whether stated in this Contract or not shall be achieved, be achievable or be attained at all or by a given completion date or any other date.

- 19.3 Except in the case of death or personal injury caused by the Company's negligence, the Company's liability under or in connection with any Service provided pursuant to this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise, shall not exceed the total income for any one year of the Contract exclusive of VAT.
- 19.4 Neither Party shall be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill.
- 19.5 The School shall indemnify and hold harmless the Company from and against all claims and losses arising from loss, damage, liability, injury to the Company employees and third parties, infringement of third party intellectual property, or causation of third party losses by reason of or arising out of any information supplied by the School to the Company, its employees or consultants pursuant to this Contract.
- 19.6 Each of the Parties acknowledges that, in entering into this Contract, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Contract and any conditions, warranties or other terms implied by statute or common law are excluded from this Contract to the fullest extent permitted by law. Nothing in this Contract excludes liability for fraud.

## **F. TERMINATING THE CONTRACT**

### **20. TERMINATION**

- 20.1 Without prejudice to any other remedies or rights under this Contract, either Party may terminate this Contract by giving two (2) Academic Terms prior written notice at any time to include the end of the Contract.
- 20.1.2 (a) If the other Party becomes insolvent; or
- (b) an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction); or
- (c) an administration order is made; or
- (d) an administrator, administrative receiver, receiver or receiver manager is appointed in respect of the whole or any part of the Other Party's assets or business or possession is taken by or on behalf of any creditor of any property that is the subject of a charge; or
- (e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Other Party or the Other Party takes or suffers any similar or analogous action in consequence of debt.
- (f) the other Party breaches the provisions of the Bribery Act 2010 or
- (g) in respect of performance after exhausting the escalation process in Schedule 1 – the Specification

## **21. CONSEQUENCES OF TERMINATION**

- 21.1 If this Contract is terminated for any reason whatsoever the Parties shall co-operate with each other for a smooth transition and handover of the Services to the School or Replacement Company as the case may be.
- 21.2 The Price which remains unpaid for Services provided shall remain payable by the School to the Company up to and including the termination date. .
- 21.3 There shall be orderly handover of assets, systems, Premises, Data, equipment records information and documentation held on behalf of either Party to the other Party for the provision of the Services.
- 21.4 The Company shall use all reasonable endeavours to transfer all data in accordance with industry standard format (or any format reasonably specified by a Replacement Company) relating to the Services including without limitation requests for Services to be undertaken which have not been completed.

## **22. FORCE MAJEURE**

Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. As soon as practicable following such notification of delay or failure in performance, 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 relevant circumstances facilitate the continued performance of this Contract. If such circumstances continue for a continuous period of more than six (6) months, either Party may terminate this Agreement by giving thirty (30) days written notice to the other Party. Except for those circumstances stated in clause 23.3.

## **23. INDUSTRIAL ACTION AND SNOW DAYS**

- 23.1 Either Party shall give the maximum possible advance warning of prospective industrial action by the other Party's Staff or other industrial disputes likely to affect the performance of this Contract adversely.
- 23.2 In the event that industrial action is taken by the Staff of the School which results in the closure of the School and deprives the Company from providing Services the Company shall be entitled to all its costs incurred in any event and for the duration of the industrial action.
- 23.3 In the event of snow days which result in the closure of the School and deprives the Company from providing Services the Company reserve the right to all its costs incurred for the duration of the snow days, after taking what action it can to minimise the costs.

## **G. DISPUTES AND LAW**

### **24. DISPUTE RESOLUTION**

The Parties agree to follow the escalation procedure in Appendix 3 of Schedule 1 (the Specification) in the resolution of any dispute which arises in relation to any aspect of the Service. Where those processes have been exhausted and no resolution has been reached, the Parties may escalate the matter to each other's Authorised Representative who shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter. Where the Parties are unable to agree the matter, the matter may be referred to a mutually agreed adjudicator or other person whose decision shall be final.

### **25. STATUTORY AND JURISDICTION**

25.1 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.

25.2 The validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

### **26. LEGAL PROCEEDINGS**

26.1 Both Parties shall co-operate with each other and provide within the timescale agreed any relevant information (at no cost) in connection with any legal inquiry dispute resolution or Court proceedings in which either Party may become involved.

26.2 Where the Parties become aware of any incident accident or other matter which may give rise to a claim or legal proceedings in relation to the Services it shall notify the other Party immediately in writing.

## **H. STATUTORY OBLIGATIONS AND REGULATIONS**

### **27 EQUALITY AND DIVERSITY**

27.1 In the performance of the Services (including provisions of Schedule 1 – the Specification), the Company shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination including the Equality Act 2010 (as amended from time to time) whether in need of protected characteristics age, race, disability, gender reassignment, pregnancy and maternity, religion or belief, sex, sexual orientation, marriage and civil partnership (relate only to discrimination aspect of duty) or otherwise in employment and shall have regard to other official guidance and code of practice in relation to promotion of equality in employment.

27.2 The Company shall take all reasonable steps to secure the observance of Clause 27.1 by its Staff employed in the execution of this Contract: the Company shall have an equal opportunities policy and procedures which is available on request

27.3 The Company shall comply with the National Minimum Wage Act 1998 (as amended) in relation to the payment of its Staff.

## **28. HEALTH AND SAFETY**

- 28.1 The Company shall at all times during the Contract Period comply with the requirement of the Health and Safety at Work Act 1974 and any other relevant act, order pertaining to the health and safety of employees and others who may be affected by the Company's acts or omissions in providing the Services under this Contract and shall require that any sub-Contractor may likewise comply.
- 28.2 The Company shall ensure that all food preparation is in accordance with the provisions of Health and Safety at Work Act 1974 and all other relevant law in accordance with industry standard,
- 28.3 Any accident or incident at or in the vicinity of the Catering Facility resulting in any sort of personal injury or death which occurs during or as a result of the performance of the Service or any of them shall be reported immediately by the Company to the School's Contract Manager.
- 28.4 The Company will be required to complete the School's accident form as well as completing their own accident procedures.
- 28.5 The Company shall provide a fully stocked first aid box at each School and replenish stocks as and when necessary.
- 28.6 The training of Staff in First Aid shall be the responsibility of the School
- 28.7 The Company shall expect the School to identify its own First Aid arrangements according to its own specific needs and circumstances, and provide appropriate training as required.

## **29. 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.

## **30. FREEDOM OF INFORMATION**

- 30.1 Both Parties shall comply with all relevant requirements under the Freedom of Information Act 2000 (the "Act") and the Environment Information Regulations 2004 (the "Regulations") and shall cooperate with each other with necessary information disclosure requirements except as otherwise stated in the Company's Articles of Association.
- 30.2 In responding to request for information under the Act or the Regulations the Parties shall consult with each other before information is released.

## **31 TRANSFER OF UNDERTAKING**

- 31.1 The Parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of this Contract and where applicable the Parties agree to comply with all the relevant provisions of TUPE as it affects transferring staff. The Company shall procure that each of its sub-Contractors shall comply with the provisions of this Contract and Clause.

31.2 The defaulting Party who fails to comply with all relevant provisions of TUPE shall indemnify the non-defaulting Party (and where applicable indemnify the Replacement Company) against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) whatsoever in respect of any breach of TUPE.

31.3 All information required under TUPE shall be provided at least 60 days before the expiry of the Contract.

31.4 The School and/or the Replacement Company shall provide appropriate pensions (in accordance with all relevant pensions Law, to employees subject to TUPE transfer and connected with the provision of the Services after the termination or expiry of this Contract. This may include entering into an admission agreement where appropriate.

## **32. SAFE RECRUITMENT AND MONITORING PRACTICES**

(This clause is currently being updated to take account of the new Disclosure and Barring Regulations and HCL will issue a variation to this Contract when the format has been agreed)

### **32.1 Safeguarding**

32.1.1 The Company shall comply with all the requirements 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 Company warrants that it will comply with all requirements under the SVG Act and all other relevant legislation in relation to safeguarding vulnerable group.

32.1.2 The School's designated senior person 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 Company's employee who work with children, young people and vulnerable adults.

### **32.2 Criminal Records Bureau ("CRB")**

32.2.1 The Company's Staff must have satisfactory Enhanced CRB checks and references prior to appointment.

32.2.2 The Company will ensure that before a Named Employee begins to perform any of the Services:

32.2.2.1 each Named Employee is questioned as to whether he or she has any criminal convictions or cautions whatsoever or any other relevant information which makes them unsuitable to perform any of the Services; and

32.2.2.2 the results are obtained of a check of the most extensive available kind made with the Criminal Records Bureau, currently Enhanced Disclosure, in accordance with Part V of the Police Act 1997 in respect of each Named Employee in accordance with the Council's policy.

### **32.3 Independent Safeguarding Authority (ISA)**

The Company shall comply with the requirements of the national Vetting and Barring Scheme ("VBS") under the Safeguarding Vulnerable Groups Act 2006 (the "SVG

Act”) in providing the Services under this Contract. The requirement for CRB checks will continue and will run in conjunction with VBS.

#### **32.4 Consent of Named Employees**

The Company shall obtain the consent of all Named Employees employed to work on this Contract to enable the Council carry out all necessary checks under this Clause 54 and for the avoidance of doubt such consent shall be sought from the Company's Named Employees prior to their commencement of work on the Contract.

#### **32.6 Protection of Freedoms Act 2012**

The Company shall comply with the provisions of Protection of Freedoms Bill as it applies to the provision of this Contract.

### **I. PROTECTION OF INFORMATION**

#### **33. DATA PROTECTION**

33.1 Each Party, including its agents and sub-contractors, shall co-operate with in complying with all the relevant requirements of the Data Protection Act 1998 (the DPA) as it applies to the provision of the Services and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach, of the DPA.

33.2 The Company shall only use any/all information that is given or made available to it by the School under the terms of the DPA for the provision of the Services in accordance with specific instructions and for no other purpose whatsoever at any time.

#### **34. CONFIDENTIALITY**

34.1 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Contract, the Addenda and the Service. The Parties shall inform their officers, employees and agents of such obligation and use all reasonable endeavours to prevent their officers, employees and agents from making any disclosure to any person of any such Confidential Information. The Parties shall only use the Confidential Information for the purpose of performing their obligations under this Contract.

34.2 The obligations of Clause 34.1 shall not apply to:

34.2.1 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

34.2.2 any disclosure of information that is reasonably required by any persons engaged in the performance of their obligations under this Contract for the performance of those obligations;

34.2.3 any information which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this clause 34;

- 34.2.4 any disclosure to enable a determination to be made under any dispute resolution procedure or in connection with a dispute between a Party and any of its sub-Company's;
- 34.2.5 was developed by a Party (or on its behalf) who had no direct access to or use or knowledge of the Confidential Information;
- 34.2.6 is required to be disclosed by any legislation (including statutory orders and guidance) or by order of a court of competent jurisdiction or by decision of the Information Commissioner or Local Government Ombudsman; or
- 34.6.7 any disclosure of information to a Party's insurers, insurance advisers or professional advisers.

### **35. INTELLECTUAL PROPERTY RIGHTS**

- 35.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
  - 35.1.1 furnished to or made available to the Company by the School shall remain the property of the School;
  - 35.1.2 furnished to or made available to the School by the Company shall remain the property of the Company;

### **36. AUDIT RIGHTS**

- 36.1 The Company shall (upon reasonable notice given by the School) permit or procure permission for any authorised representative of the School (including the School's external auditors) to have reasonable access for audit purposes to information, records, premises or the equipment used in the provision of the Services.
- 36.2 The Company shall provide such information documents and reports in the form as may be reasonably required by the School.
- 36.3 The Company shall keep and maintain information document and reports for the period required under the relevant legislative requirement.

## **J. CONTRACT SPECIFIC CONDITIONS**

### **37. LICENCE TO OCCUPY**

- 37.1 Any land or Premises, including temporary buildings, made available to the Company by the School in connection with this Contract shall be made available to the Company and shall be used by the Company solely for the purpose of performing its obligations under this Contract. The Company shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of this Contract.
- 37.2 The Company shall not use School's Premises for any purpose or activity other than the provision of the Services unless otherwise permitted and agreed in writing.
- 37.3 The Company shall pay for the cost of making good any damage caused by the Company and its Staff other than fair wear and tear.

37.4 The Parties agree that there is no intention on the part of the School to create a tenancy of whatsoever nature in favour of the Company or its Staff and that no such tenancy has or shall come into being.

37.5 Access to the School's Premises shall not be exclusive to the Company but shall be limited to such Staff as are necessary to perform the Services concurrently with the execution of work by others. The Company shall co-operate free of charge with such others on the School's Premises as the School may reasonably require.

### **38. EQUIPMENT**

38.1 The School retains ultimate responsibility for the provision, maintenance, repair and security of heavy Equipment (or other specified Equipment) provided for use by the Company during the Contract Period but during the Contract Period managed by the Company. The Company shall be under no liability in respect thereof save where any damage or loss is caused to the School's Equipment by the acts or omissions of the Company.

38.2 The School shall during the Contract Period permit the Company to use, free of charge, the heavy Equipment, solely for the provision of the Service.

38.3 The heavy Equipment shall remain at all times the property of the School, including any additions or alterations made to individual items of heavy Equipment during the Contract Period.

38.4 The responsibility for the PAT testing, in compliance with legislation, of all the Equipment required for the provision of the catering service will be the School's.

### **39. HYGIENE**

The Company shall comply with all current UK and EU Food Hygiene legislation and submit a copy of their Food Hygiene policy to the School on request.

### **40. HYGIENE – FOOD HANDLERS**

40.1 The Company shall ensure that all persons employed by them, within and around areas designated for the preparation and service of food, are in good health and have a high standard of oral hygiene and general personal hygiene.

40.2 Staff engaged in the handling of food, who become aware that he/she is suffering from, a carrier of, or in contact with other people suffering from, a Notifiable Illness or gastro intestinal infection shall inform the Company immediately.

40.3 A Notifiable Illness is as defined by a Working Group of Food Industry Medical Officers, or any other similar groups throughout the life of the contract assisted by the Department of Health; Health Protection Agency and Employment Medical Advisory Service of the Health and Safety Executive.

40.4 The Company upon receiving any such notice shall inform the Authority's Environmental Health Service and the School. It shall be the responsibility of the Company to take any further actions as may be necessary to meet and fulfil any legal requirements imposed as a result of such notification. The Company shall also keep the School informed of any such further action.

## **41. UNIFORMS**

- 41.1 The Company shall ensure that Staff are supplied with protective clothing and that it is clean when worn.
- 41.2 The uniform shall be such that Staff can be identified as providers of the Service.
- 41.3 All Staff employed by the Company, either permanent or temporary shall wear the approved uniform at all times while involved in the provision of the Service, including production of meals and serving to customers.

## **42 WASTE**

### **42.1 Company's responsibilities for waste**

- 42.1.1 The Company must at all times comply with current environmental legislation, particularly the s.34 Environmental Protection Act (1990), Duty of Care
- 42.1.2 All waste must be taken by the Company's Staff from the kitchen to the designated bins outside. The Company must ensure that its Staff shall be mindful of recycling and environmental policies of the School.

### **42.2 Storage of waste**

- 42.2.1 The responsibility for the disposal of all rubbish associated with the meal service including the rental of bins is the School's.
- 42.2.1 The Company may use the existing facilities for the storage of waste at the School prior to disposal, on condition that it complies with all reasonable requirements of the School's Contract Manager as to its use, the positioning of the waste within them, and the arrangements for their cleaning, clearing and maintenance. All waste within the kitchen area will be stored in appropriate containers supplied by the Company.
- 42.2.3 The Company must not discharge oil or grease or other materials likely to cause blockages into the drains, whether within or outside the School.

## **43. PRIVATE FUNCTIONS**

- 43 It is at the discretion of the Headteacher to authorise the use and occupation of educational premises outside standard hours of instruction. In the first instance, the option to provide catering services, when the kitchen premises are let, shall be offered to the Company.
- 43.2 The Company may use the Catering Facilities for purposes other than the provision of the Service, provided prior written Approval of the School has been obtained. The Company must comply with all the provisions of this Contract in providing a private function.
- 43.2 Where catering is arranged by the School other than the Company, then the School shall be liable for any damage caused to the facilities.

#### **44. CATERING FACILITIES**

- 44.1 The School will maintain the fabric of the Catering Facilities fair wear and tear from the normal and reasonable use of the facilities expected.
- 44.2 The Company shall inform the School of any defects appearing in or damage occurring to floor coverings and to the fabric of the Catering Facilities, including gas and water pipes, drains and electric wiring upon termination of the Contract, the Company shall vacate the School, and ensure that the Catering Facilities are returned to the School in good condition, and clean and tidy, fair wear and tear only excepted.
- 44.3 The Company is responsible at its own expense for all the day to day cleanliness of the Catering Facilities and all equipment therein.
- 44.4 The School will be responsible for the cleaning of all windows, except for glass panels in doors, and glass panels beside doors, which shall be cleaned by the Company. It is recommended that air extraction fan cleaning takes place biannually.
- 44.5 If, as a result of the use of the Catering Facilities by any other person, the Company considers that additional cleaning is necessary, the Company shall first consult the School's Contract Manager and ensure that the Company has sufficient information to enable recovery of additional cost incurred of such cleaning from the persons responsible.

#### **45. TELEPHONES**

- 45.1 The School shall make every effort to provide a telephone line into the kitchen.
- 45.2 The cost of calls made from the Kitchen line may be monitored by the School and any costs considered to be excessive shall be charged back to the Company.
- 45.3 If the kitchen office has its own telephone line it shall only be used by the catering staff for the provision of the Service.

#### **46. PEST CONTROL**

- 46.1 The Company shall notify promptly the School of any infestation in all areas where the Service is performed.
- 46.2 It is the School's responsibility to engage a suitable and professional Provider to address each situation.
- 46.3 The Company shall record in writing all such notifications made to the School and co-operate fully with the pest control personnel during treatment.

#### **47. ENVIRONMENTAL HEALTH REPORTS**

Any actions arising from a visit by an Environmental Health Officer remains the ultimate responsible of the School. HCL has clearly identified its duties in the Contract and will fulfil its direct obligations but will in addition assist the School in managing any consequences of such a visit.

**THE PROVISION OF A CATERING SERVICE FOR  
NURSERY/PRIMARY/MIDDLE/SPECIAL SCHOOLS  
CONTRACT REF: HCL/NPMS/001**

**DEFINITIONS**

<b>“Academic Year”</b>	means a year commencing from 1 <sup>st</sup> September in one year until 31 <sup>st</sup> August of the subsequent year
<b>“Academic Term”</b>	means any one of three terms within an Academic Year
<b>“Affected Party”</b>	means a party affected by a Force Majeure Event.
<b>“Approval”</b>	means the written consent of both Parties authorised representatives. (“Approved” or “Approve” shall be construed accordingly).
<b>“Assets”</b>	<p>means all assets and rights which are in the possession, custody, control of the Company and which the Company has the power to transfer to enable the School or Replacement Company to carry out the Services in accordance with this Contract (or so many of them as the School or the Replacement Company should require), including:</p> <ul style="list-style-type: none"> <li>(a) any books, records, and data (including operating and maintenance manuals, health and safety manuals and other know-how)</li> <li>(b) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);</li> <li>(c) any revenues and any other contractual rights;</li> <li>(d) any intellectual property rights; and</li> <li>(e) any other assets specified between the Parties and in the control of the Company for the provision of the Services within this Contract.</li> </ul>
<b>“Clause”</b>	means the Clause(s) contained in this Contract.
<b>“Client”</b>	means the School including its successors and assigns.
<b>“Commencement Date”</b>	means the date specified in Clause 3.1 of the Contract.
<b>“Commercially Sensitive Information”</b> to	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.

<b>“Conditions of Contract”</b>	means this Contract’s terms and conditions and/or any modification duly agreed in accordance with this Contract.
<b>“Confidential Information”</b>	means all information of either Party or any sub-Company 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.
<b>“Contract”</b>	means this contract and all Schedules attached hereto.
<b>“Contract Period”</b>	means the period specified in Clause 3 of this Contract.
<b>“Company”</b>	means Hertfordshire Catering Ltd. including its Staff.
<b>“Company’s Authorised Representative”</b>	means such person nominated in writing by the any and approved by the School’s Contract Manager.
<b>“Criminal Records Bureau”</b>	means the bureau established pursuant to Part V of the Police Act 1997.
<b>“Data”</b>	means either the Company or the School’s data provided and used for the provision of the Services
<b>“Dispute Resolution Procedure”</b>	means the procedure set out in Clause 24 of this Contract.
<b>“Enhanced CRB”</b>	means enhanced checks carried out under the bureau established pursuant to Part V of the Police Act 1997.
<b>“Equipment”</b>	means the Company’s or the School’s (as the case may be) equipment, plant, materials and such other items supplied and used by the Company in the performance of its obligations under this Contract.
<b>“Force Majeure Event”</b>	means and includes the occurrence after the Commencement Date of: <ul style="list-style-type: none"> <li>(a) war, civil war, riot, civil unrest, civil emergency, terrorist attack or threat of terrorist attack;</li> <li>(b) nuclear, chemical or biological contamination; or</li> <li>(c) an act of God.</li> </ul>
<b>“Form of Agreement”</b>	means the form of agreement executed by the Parties to give legal effect to this Contract.

<b>“Intellectual Property Rights”</b> marks (“IPR”) otherwise) database moral  limited	means patents, inventions, trade marks, service logos, design rights (whether registerable or applications for any of the foregoing, copyrights, rights, domain names, trade or business names, rights and other similar rights or obligations whether registerable or not in any country (including but not to the United Kingdom) and to sue for passing off.
<b>“Key Performance Indicators”</b>	means the key performance indicators as defined and set out in Appendix 2 of Schedule 1 (the Specification).
<b>“Law”</b>	means any applicable Act of Parliament, statutory legislation which applies to the provision of the Service
<b>“Month”</b>	means calendar month.
<b>“Named Employee”</b>	means the Company’s Staff including all volunteers involved in the provision of the Services.
<b>“Notice”</b>	means any formal communication between the Parties as required by the Contract.
<b>“Party”</b>	means a party to this Contract and “Parties” shall be construed accordingly.
<b>“Premises”</b>	means the premises (including the kitchen area) used for the provision of the Services
<b>“Price”</b>	means the price applicable to the provision of the Services and as set out in Appendix 1 of Schedule 1 (the Specification)
<b>“Replacement Company”</b>	means any third party appointed by the School 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 School internally and/or by any third party.
<b>“Schedules”</b>	means the Schedules attached to this Contract.
<b>“School’s Contract Manager”</b>	means the person appointed as such by the School
<b>“Services”</b>	means the Services to be provided pursuant to this Contract as specified in Schedule 1 (the Specification) and Service shall be construed accordingly.
<b>“Specification”</b>	means the description of the Services to be provided under this Contract and attached as Schedule 1.

<b>“Staff”</b>	means all persons employed by either the Company or the School responsible for the provision and supervision of the Services.
<b>“VAT”</b>	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.
<b>“Variation”</b>	means any change to this Contract agreed between the Parties and evidenced in writing:
<b>“Working Day”</b>	means a day (other than a Saturday or a Sunday) on which banks are opened for domestic business in the City of London.