

DATED _____ 2004

THE COUNCIL OF THE CITY OF MANCHESTER (1)

- and -

<Contractor (2)>

and

<Contractor (3)>

and

<Contractor (4)>

FRAMEWORK AGREEMENT RELATING TO DESIGN AND/OR
CONSTRUCTION OF EDUCATION RELATED PREMISES

The City Solicitor
Town Hall
Manchester
M60 2LA

L/MS/DG

- 1.7 **"Council's Representative"** means the person named in or nominated pursuant to clause 3
- 1.8 **"Contractor's Representative"** means the person named in or nominated pursuant to clause 7 in respect of each Contractor.
- 1.9 **"Framework Objectives"** means the high level principles which underpin the delivery of the parties obligations under this Contract specified in Schedule 1
- 1.10 **"Good Industry Practice"** means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person in a similar type of undertaking under the same or similar circumstances
- 1.11 **"Intellectual Property Rights"** means the intellectual property (including but not limited to copyright and design rights) which (or the subject matter of which) is created, brought into existence acquired, used or intended to be used by the Contractor or by other 3rd parties (for the use by or on behalf of or for the benefit of the Contractor) for the purpose of the Services and/or the design and/or construction of any Project or otherwise for the purposes of this Agreement
- 1.12 **"ITN"** means the Council's Invitation to Negotiate Document dated the August 2003 pursuant to which the Proposals were submitted,
- 1.13 **"Key Performance Indicators "** means the indicators relating to the Services and/or Works as set out in Schedule 3 against which value for money and/or performance of the Services and the Works shall be measured by the Council
- 1.14 **Law"** means:
- (a) any applicable statute or proclamation or any delegated or subordinate legislation;
 - (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972
 - (c) any applicable guidance, direction or determination with which the Contractor is bound to comply to the extent that the same are published and publicly available or the existence or the contents of them have been notified to the Contractor and
 - (d) any applicable judgement of a relevant court of law which change binding precedent in England and Wales in each case in force in England and Wales
- 1.15 **"Method of Operation"** means the Contractor's respective document setting out how each of the Contractor's will carry and complete the Services and/or any element of the Works for a Project pursuant to this Agreement submitted as part of its Proposal

- 1.16 **“NEC Contract”** means the Engineering and Construction Contract Second Edition Option C entered into for each Project pursuant to clause 8
- 1.17 **“Parties”** means the Council and the Contractors
- 1.18 **“Project”** means any new capital design and construction or construction education related project which one of the Contractors has been or is appointed to carry out and complete by the Council pursuant to this Agreement
- 1.19 **“Proposal”** means the Contractors’ proposals variously dated September 2003 respectively submitted in response to the ITN (as the same may have been varied by agreement between the Council and each Contractor) in respect of the Services
- 1.20 **“Proprietary Material”** means all drawings, details, plans, specifications, schedules, reports, calculations and other work (and the designs contained within them) prepared or to be prepared by or on behalf of the Contractors in connection with the Services and/or Works
- 1.21 **“Services”** means the services to be performed under this Agreement pursuant to the ITN, the Proposal and otherwise pursuant to this Agreement.
- 1.22 **“Schedules”** means the Schedule to this Agreement.
- 1.23 **“Framework Rates”** means the Contractors fixed overhead and profit figures and/or other rates for the performance of the Services and any Works submitted as part of the Proposal set out in Schedule 2 fixed for the Agreement Period
- 1.24 **“Works”** means design and construction or construction works to be carried out and completed by the Contractor for a Project pursuant to the NEC Contract
- 1.25 Words importing the singular meaning shall include, where the context so admits, the plural meaning and vice versa.
- 1.26 <Contractors’ names> shall together be referred to as “the Contractors” and individually as a “Contractor” for the purposes of this Contract and references to “a Contractor” shall mean each Contractor
- 2.0 **Commencement, Duration and Expiry of Agreement**
- 2.1 The Contractor shall commence performance of the Services from the Commencement Date until December 2006 subject to extension pursuant to clause 2.2 unless terminated earlier pursuant to this Agreement
- 2.2 The term of this Agreement may be extended for a further period of 2 years subject to the agreement of all Parties
- 3.0 **Council's Representative**

- 3.1 The Council's Representative shall be Bernard Core or such other persons nominated in writing by the Council from time to time or to act in the name of the Council for the purposes of the Agreement
- 3.2 From time to time the Council's Representative may appoint one or more representatives to act for the Council's Representative generally or for specified purposes or periods. Upon the making of such appointment(s) the Council's Representative shall give written notice thereof to the Contractors.

4. Purpose and Conduct of the Parties

- 4.1 The Parties agree that it is the purpose of this Agreement to establish a long term partnering arrangement between the Council and the Contractors to deliver pursuant to the Services and/or Works the construction of the highest possible quality education related premises subject to budget and other relevant factors in a cost effective manner.
- 4.2 The parties shall use all reasonable endeavours to attain the Framework Objectives during the Agreement Period.

5.0 The Contractors Obligations

- 5.1 The Contractors shall perform the Services
- (i) with the degree of skill and care and diligence to be expected of a properly qualified and competent contractor experienced in carrying out Services and/or Works of a similar standard quality, size, scope, nature, complexity and value to the Services and Works
 - (ii) in accordance with all relevant Law and Codes of Practise
 - (iii) in accordance with all Consents
 - (iv) in a manner which is not likely to be injurious to health or cause damage to property
 - (v) in accordance with Good Industry Practice
 - (vi) otherwise in accordance with this Contract
- 5.3 The Contractors shall provide for and procure open book accounting and supply chain value management and shall use all reasonable endeavours to do so in respect of their subcontractors
- 5.4 A Contractor shall inform the Council's Representative as soon as it becomes aware and confirm in writing of any matter which could impair or delay the performance of the Services and/or Works or any part(s) thereof, or which may increase its prices giving details of the circumstances, reasons and likely duration.
- 5.5 The Contractor shall at all times allow the Council's Representative and such persons as may from time to time be nominated by the Council's Representative access to:

- 5.5.1 all work places of the Contractor for the purpose of inspecting services and/or work being performed pursuant to the provision of the Services and/or Works subject to the Council giving reasonable notice to the Contractor
- 5.5.2 any offices, premises or other location of the Contractor for the purpose of inspecting records and documents in the possession, custody or control of the Contractor in connection with the provision of the Services and/or the Works
- 5.5.3 any personnel or agent of the Contractor for the purpose of interviewing such persons in connection with the provision of the Services and/or the Works
- 5.5.4 technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Services and/or the Works
- 5.6 The Contractor shall as may be reasonably required, liaise with and co-ordinate its activities with those of any Contractor, contractor or sub-contractor employed directly or indirectly by the Council for purposes of the Services and/or the Works and shall provide the Services and/or Works in harmony with and at no detriment to any other service provided by or on behalf of or to the Council.
- 5.7 The parties agree that it is fundamental to the successful operation of this Agreement that the Contractors devote sufficient resources and expertise to carry out the Services in a competent and timely manner and otherwise in accordance with the standards set out in this clause 5 and otherwise pursuant to this Agreement

5.8 Intellectual Property Rights

Each Contractor grants to the Council an irrevocable, royalty-free, non-exclusive licence, to use and to reproduce any or all of the Proprietary Material for any purpose whatsoever connected with the Services and/or Works including, but without limitation, the execution, completion, maintenance, letting, occupation, management, sale, advertisement, extension, alteration, reinstatement and repair thereof. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the termination (for any reason) of the Contractor's engagement under the agreement, provided always that each Contractor shall not be liable for the consequences of any use of the Proprietary Material for any purpose other than that for which the same were prepared and the Council shall indemnify the Contractors against such other usage.

Insofar as the Contractor is the author (as referred to in the Copyright, Designs and Patents Act 1998) of the Proprietary Material and of the Work, each Contractor waives any moral rights which it might otherwise be deemed to possess under Chapter IV of such Act in respect of the same. Each Contractor

shall procure for the Council a corresponding waiver from the author (as referred to in such Act) of the remainder of the Proprietary Material and of the Services and/or Works in respect of the same.

Each Contractor agrees on request at any time to give to the Council or any persons authorised by the Council access to the Proprietary Material and shall provide copies of any or all of the Proprietary Material to the Council upon request and upon payment by the Council of the Contractor's reasonable copying charges in connection therewith.

Each Contractor shall procure that any Sub-Contractor or third party providing any Proprietary Material shall grant an irrevocable, royalty-free non-exclusive licence in the same terms *mutatis mutandis* to the Council

All royalties or other sums payable in respect of the supply and use of any Proprietary Material, patented articles, processes or inventions required in connection with the Contract shall be paid by the Contractor. Each Contractor shall indemnify the Council from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Council by reason of that Contractor infringing or being held to infringe any intellectual property rights in the course of or in connection with the Agreement

5.9 The Contractor shall comply and procure compliance in all respects with all Law relating to health and safety in respect of the Services

6.0 Non-Exclusive Nature of Contract

6.1 The Council does not give any guarantee and/or warrant the actual value of the Services and/or Works and/or number of Projects (if any) which will be placed with the Contractor pursuant to this Agreement and accepts no liability in respect thereof

6.2 Notwithstanding the comments in 6.1 above the Council will reimburse the Contractor's reasonable costs incurred by the Contractor in considering individual projects which do not proceed into the project delivery stage.

7.0 The Contractors Personnel

7.1 The Contractor shall appoint a nominated representative (being a person having a minimum of 10 years experience at senior level in the construction industry with extensive experience of major public sector multi-million pound projects) to liaise with the Council's Representative on all matters pertaining to this Agreement. The nominated representative shall not be replaced without the prior written approval of the Council, such approval not to be unreasonably withheld

7.2 In addition without prejudice to clause 7.1 the Contractor shall engage sufficient number of staff, specialist works and other persons with the requisite

level of skill and experience to ensure that the Services and/or the Works are provided at all times and in all respects in accordance with the Agreement.

- 7.3 The Contractor's personnel employed in the provision of the Services shall, without prejudice to the requirements of clause 7.1 be properly and sufficiently qualified, competent, skilled, honest and experienced and shall at all times exercise care in the execution of their duties:
- 7.4 The Council's Representative shall, upon giving notice in writing, have the power to require the Contractor but not unreasonably or vexatiously to remove from the provision of the Services any personnel of the Contractor specified in such notice including the said Contractor's Representative. The Contractor shall forthwith remove such personnel from the provision of the Services and shall immediately provide a replacement unless the Council determines otherwise. Save as provided by this clause 7.4 the Contractor shall not remove the Contractor's Representative or any person seconded pursuant to clause 7.4 without giving the Council 1 months notice of such removal.
- 7.5 The Council shall in no circumstances be liable either to the Contractor or to such personnel in respect of any cost, expenses, liability, loss or damage occasioned by such removal and the Contractor shall fully indemnify the Council in respect of any claim by such personnel
- 7.6 The Contractors and the Council agree that the protection of children and Council staff in council premises being altered, extended and constructed is of the highest priority. Due to the transient nature of the workforce employed by the supply chain a system of formal reviews with the Criminal Record Board ("CRB") may not always be practical due to the time taken by the CRB to respond to every request for information.

The Contractors will use reasonable endeavours through a procedure to be agreed by the Parties for implementation on each Project to carry out (or procure the carrying out of) CRB checks where applicable on its own in house staff and subcontractors staff employed on any of the projects carried out under this agreement.

- 7.7 The Contractors shall use reasonable endeavours to ensure that no single member of its personnel or others engaged by it for the Services and/or Works shall enter a school site (that is not part of a Works construction site) alone and that the consent of the School (and the Council) is obtained prior to 2 or more such persons so doing.

8.0 **Agreement and Commencement of Projects**

- 8.1 The parties obligations in relation to the identification, approval, pricing where not fixed pursuant to this Agreement are set out in this clause 8
- 8.2 The Council shall use reasonable endeavours to give the Contractors as much advance notice as possible in respect of any Project that the Council proposes that the Contractor carry out:

- (i) the Council shall submit to the Contractor in writing an initial briefing of the nature of the Project and the Council and the Contractor shall within 21 days enter into preliminary discussions and negotiations and attend meetings in respect thereof as required by the Council to be attended by the Council's Representative and the Contractor's Representative
 - (ii) the selected Contractor will assess and appraise the feasibility of the Project and submit a proposal in respect thereof to the Council
 - (iii) the Contractor's proposal will be appraised by the Council
 - (iv) the Council will carry out a value for money appraisal
 - (v) if the Council so decides in its discretion the Council will award a Project to a Contractor and that Contractor will be required to carry out the Project save where the Contractor can provide evidence to the reasonable satisfaction of Council that it does not have the capacity to do so

8.3.3 In the event pursuant to clause 8.2 that the Council does require the Contractor to carry out a Project the Council and each Contractor will enter into an agreement in the form of the NEC Contract for the purpose of the carrying out and completion of the Works for that Project. The Contractors shall not commence the provision of any or all of the Works in respect of a Project without entry into of the NEC Contract.

8.3.4 In the event that the Council aborts a Project the Contractor shall be paid all proper and reasonable sums for Services and/or Work performed up to such time provided that the Contractor shall not be paid twice for such pursuant to the NEC Contract

9.0 **Price and Payment for the Services**

9.1 **Basis of Price and Payment**

9.1.1 The Framework Rates specify each Contractor's fixed rates and/or fees in respect of its profit and overheads for the performance of any Services

9.2 **Payments**

9.2.1 The Council shall pay to each Contractor the fees due to it ascertained in accordance with the Proposal and/or Framework of Rates at such intervals as the parties agree subject to receipt of invoices in respect thereof and such other documentary evidence as the Council may reasonably require. Payment shall be made within 30 days of receipt of invoice

9.3 All fees in the Agreement are exclusive of VAT. The Council shall be liable to pay to the Contractor such VAT as may be properly chargeable in respect of the performance of the Services

9.4 The Contractor shall maintain individual staff timesheets on the Project and shall make them available for inspection when required by the Council.

9.5 The Parties agree that costs shall be reimbursed and/or savings shared pursuant to Schedule 6 – Cost Reimbursement Model and Sharing of Saved Amounts.

10.0 **Assignment and Sub-Contracting**

10.1 The Contractors shall not:

10.1.1 assign the Agreement or any part thereof or the benefit or advantage of the Agreement or any part thereof provided that a Contractor may assign to a company within its group of companies (as defined in S736 of the Companies Act 1985) subject to the Council, acting reasonably, being satisfied that such company is of equivalent financial standing, technical ability and requisite experience;

10.1.2 sub-contract any of the Services (save as specified in the Proposal) or any part thereof to any person without the previous written consent of the Council's Representative which consent shall be in the discretion of the Council's Representative and if given shall not relieve each of the Contractors from any liability or obligation under the Agreement and each of the Contractors shall be responsible for the acts, defaults or neglect of any sub-contractors, its employees or agents in all respects as if they were the acts, defaults or neglect of that Contractor

11.0 **Collateral Warranties**

11.1 Upon the written request of the Council's Representative, each of the Contractors shall by deed and at no consideration to either the Council or the third party, collaterally warrant to any interested third party named by the Council's Representative that the Contractor has performed or will perform the Services with reasonable skill, care and diligence in conformity with the normal standards of the Contractor's profession and in accordance with and subject to the provisions of the Contract and shall enter into such warranty in the form set out in Schedule 4

11.2 The Contractors shall use all reasonable endeavours to procure that each member of the professional team in respect of the Services and each and every designer, professional contractor or sub contractor having responsibilities for the specification, design supervision or certification of any part of any Services shall enter into warranties in favour of the Council in the form of warranty set out in Schedule 5

12.0 **Liability, Indemnity and Insurance**

12.1 The Contractors shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in any way arising out of the provision of the Services and/or Works in relation to the injury to, or death of, any person, and loss of or damage to, any property including property belonging to the Council except and to the extent that it may arise out of the act, default or negligence of the Council its employees or agents not being the Contractor or its personnel

12.3 The Contractors shall maintain public insurance liability cover to at least the sum of £10 million respectively in respect of any one incident and the Contractors' insurance policy effecting such cover shall have the interest of the Council endorsed thereon or shall otherwise expressly by its terms confer its benefits upon the Council

12.4 The Contractor shall supply the Council forthwith and upon each renewal date of any relevant policy a certificate from its insurers or brokers confirming the Contractor's insurance policies comply with clause 12.3 and the Contractor shall supply to the Council on request copies of all insurance policies, cover notes, premium receipts and other documents necessary to establish compliance with clause 12.3

12.5 If the Contractor fails to take out and maintain insurance required under clauses 12.2 and 12.3 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 the Contract or such amount may be recoverable by the Council from the Contractor as a debt

12.6 **Professional Indemnity Insurance**

12.6.1 The Contractor shall maintain with an insurance company approved by the Council professional indemnity insurance in respect of the Contractor's obligations to provide the Services and/or Works with reasonable skill, care and diligence in conformity with the normal standards of the Contractor's profession. Such insurance shall be in an amount of £5 million in the aggregate (in the case of <CONTRACTOR> with two automatic reinstatement in a year)for a period of 12 years from the date of the completion by the Contractor of its obligations in respect of the provision of the Works PROVIDED ALWAYS that such insurance is available to Contractors of the same profession or discipline at commercially reasonable rates. The Contractor shall immediately inform the Council if such insurance is not or ceases to be available at commercially reasonable rates in order that the Contractor and the Council can discuss the best means of protecting the respective positions of the Contractor and the Council in the absence of such insurance. As and when it is reasonably

requested to do so by the Council each of the Contractors shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

- 12.6.2 Should a Contractor cease to be insured due to such insurance ceasing to be available to contractors of the same profession or discipline at commercially reasonable rates then notwithstanding the provisions of clause 12.6.1 the Council may, but not unreasonably or vexatiously, without prejudice to any accrued rights or remedies under the Agreement, terminate the Contractor's employment under the Agreement by notice in writing having immediate effect
- 12.7 The Council shall be not liable to the Contractors for any indirect or consequential loss (including but not limited to loss of profit, loss of goodwill, loss of contracts) howsoever arising under this Agreement whether in contract, tort or otherwise
- 12.8 The Contractors shall be not liable to the Council for any indirect or consequential loss (including but not limited to loss of profit, loss of goodwill, loss of contracts) howsoever arising under this Agreement whether in contract, tort or otherwise

13.0 Termination

- 13.1 A Party's involvement in this Agreement shall terminate in the event of:
- 13.1.1 discovery of a material misrepresentation by it during the competition and negotiation process
- 13.1.2 it has committed a material breach of this Agreement and such breach, if remediable, is not remedied within 28 days of written notice by a non-defaulting party (which notice shall be given to all the other Parties as well,
- 13.1.2if it suffers any distress or process of execution to be levied on its goods, or if it consists of one or more individuals, any one of them dying, committing any act of bankruptcy or having a bankruptcy order made against him/her; entering into (whether an individual or a body corporate) any arrangement, agreement or composition with and for the benefit of its creditors (including a voluntary arrangement under the provision of the Insolvency Act 1986); or if the party consists of a body corporate, the party or its parent company having a winding up order made or (except for the purpose of amalgamation or reconstruction) a resolution passed for voluntary winding up, or having applications made for the appointment of an administrator, administrative receiver or receiver, or an administrator, administrative receiver or receiver having been appointed over the whole or any part of its business and/or asset; or having a provisional liquidator, receiver or manager of the whole or any part of its business appointed;

or having possession taken of any of its property comprised in a floating charge by or on behalf of the holders of any debentures secured by the floating charge.

- 13.2 Termination of the Party shall not affect the applicability of this Agreement to the other Parties which shall remain valid and subsisting and its terms unaltered;
- 13.3 The Council shall be entitled to terminate the employment of a Contractor pursuant to this the Agreement and to recover from the Contractor the amount of any loss or damage resulting from such cancellation if:
- 13.3.1 a Contractor shall have offered, or given, or agreed to give any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to the Agreement or any other contract with the Council;
- 13.3.2 the like acts shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor); or
- 13.3.3 in relation to any contract with the Council, the Contractor or person employed by it or acting on its behalf shall:
- 13.3.3.1 have committed any offence under the Prevention of Corruption Acts 1887 to 1916; or
- 13.3.3.2 have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972
- 13.4 Clauses which expressly or by implication are intended to continue in effect notwithstanding expiry or termination in whole or in part this Agreement shall remain in force following the expiry or termination in whole or in part of this Agreement
- 13.5 Termination of the Agreement shall be without prejudice to the accrued rights and remedies of any Party

14.0 **Payment Following Termination**

- 14.1 Following termination pursuant to clauses 13.1 - 13.3 the Council shall pay to the Contractor due fees for all Services provided to that time. Such payment shall be made in accordance with the payment of fees provisions set out in clause 9 or where such method is inappropriate shall be as agreed between the parties

15 **number not used**

16.0 **Notices**

All notices and other communications shall be in writing and shall be deemed to have been duly given: when delivered, if delivered by messenger during normal business hours of recipient; when sent, if transmitted by telex or facsimile transmission (receipt confirmed) during normal business hours of the recipient, or on the 3rd business day following mailing, if mailed by certified or registered mail postage pre-paid in each case addressed to each party's registered office or any other address notified to each other in writing as an address to which notices, invoices and other documents should be sent

17.0 Confidentiality

17.1 The Contractor shall not without the written consent of the Council's Representative during the Contract Period or at any time thereafter make use for its own purposes or disclose to any person (except as may be required by law or for the proper performance of the Services and/or Works) the Agreement Documents or any information therein or in any material provided to the Contractor by the Council pursuant to the Contract or prepared by the Contractor pursuant to the Contract all of which information shall be deemed to be confidential

18. Variations

18.1 This Agreement may only be varied by an agreement in writing signed by duly authorised representatives of each party.

19.0 Jurisdiction

The construction validity and performance of this Agreement shall be governed by English law and shall be within the exclusive jurisdiction of the English Courts

20. Dispute Resolution

20.1 The Council and the Contractors agree that they will seek to resolve any problems or differences having regard to the following principles:

20.1.1 Seeking solutions without apportioning blame;

20.1.2 Seeking mutually beneficial solutions;

20.1.3 Treating each other as equals

20.1.4 Accepting that adversarial attitudes waste time and money; and

20.1.5 Seeking verbal discussion in preference to written statements.

20.2 The Parties shall endeavour to notify each other of any anticipated disputes so that any potential dispute can be avoided by negotiation between them.

20.3 The Parties shall endeavour to resolve any failures to agree matters or any dispute by direct negotiations between senior representatives of those parties

20.4 Each Party shall give serious consideration to the use of mediation if any dispute cannot be resolved by direct negotiation.

21 Collaboration

21.1 A Framework Management Group (FMG) will be established by the parties comprising:

21.1.1 two representatives from each of the Parties from time to time who shall, in each case, be of senior management level and in respect of the Contractor one of which shall be the Contractors' Nominated Representative

21.1.2 such other representatives from other contractors that the Council has contacted with in respect of a framework arrangement for education related premises

21.2 The FMG shall meet regularly (and at least every month) to provide strategic input into how the partnering established by this Agreement is operating and to review:

21.2.1 financial; and

21.2.2 operating (including performance) issues and to give guidance on and approve which new Projects should be progressed, by whom and on what basis.

21.3 The FMG will serve as a forum for the open exchange of ideas and enable the parties and other representatives of other contractors, to discuss their forthcoming work requirements to ensure an integrated co-ordinated approach to fulfilling such requirements

21.4 FMG meetings will take place at such places and times as the parties shall decide. Agendas will be circulated on behalf of the chairman [14] days in advance (with supporting papers) and any party wishing to raise other agenda items (including an item under "Any other business") will notify all other parties (with supporting papers) no later than 3 Business Working Days in advance.

22 Value for Money

22.1 The Contractor(s) shall supply such accurate and completion in formation relating to the Services and/or the Works in respect of any Project as the Council may reasonably require to enable the Council to assess whether the value for money is being achieved and/or performance of the Services and/or Works pursuant to the KPI's:

23 Records and Open Book Accounting

Maintenance of Records

23.1 The Contractor shall, and shall procure that any subcontractor shall, maintain a true and complete set of records of personnel and all activities relating to the carrying out and completion of any Project and all transactions related thereto and a complete up to date and orderly documentary record of all the transactions entered into by Contractor for the purposes of any Project including copies of all deeds or agreements whereby a person is appointed to perform any task in relation to the Works, and all such other information reasonably required by the Council and provide the Council with a copy of such documents free of charge within five (5) working days of the Council's request for the same

Duration of Retention of Records

23.2 The Contractor shall, and shall procure that any third party shall, retain all documents referred to in clause 23.1 (and any other records the Contractor required to keep under the Agreement) for a period of not less than twelve (12) years from that document's creation or coming into the Contractor's possession, whichever is the later. The Council shall have the right to audit any and all such records at any reasonable time on reasonable notice during the term of this Agreement and during the 12 year period following the expiry or termination of this Agreement whichever is the earlier.

24 Best Value Duty

24.1 In this clause 24 the following definitions shall apply

"Best Value Duty" means the duty imposed on the Council by Part 1 of the 1999 Act and under which the Authority 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

"Best Value Performance Plans" means the best value performance plans which are required to be provided by the Authority in each financial year in accordance with section 6 of the 1999 Act

"Best Value Review" means a review which conducted by the Authority in accordance with the 1999 Act

"Best Value Review Benchmarking Exercise" means the benchmarking exercise to be undertaken in relation to the Services in accordance with this clause 25

"Best Value Review Date" the third anniversary date of the Commencement Date of this Agreement

"1999 Act" means the Local Government Act 1999

- 24.2 The Council may carry out at each Best Value Review Date a Best Value Review in respect of the Services.
- 24.3. The Contractors acknowledge that the Council is subject to the Best Value Duty. The Contractors shall use all reasonable endeavours to [assist the Council to discharge the Best Value Duty in respect of the Services and shall undertake or refrain from undertaking such actions as the Council shall request to enable the Council to comply with the Best Value Duty including:-
- (a) actively promoting, supporting and assisting the Council in meeting its Best Value Duty including the Council conducting Best Value Reviews and preparing Best Value Performance Plans;
 - (b) complying with all requests by the Council for assistance in preparing its Best Value Performance Plans; and
 - (c) complying with requests for information, data or other assistance made by the Council in pursuance of its Best Value duty including:-
 - (i) to facilitate the inspection of the Council's compliance with its Best Value Duty pursuant to Part 1 of the 1999 Act; and
 - (ii) to assist the Council in relation to any action taken by the Secretary of State under Section 15 Local Government Act 1999;
 - (iii) to enable the Council to comply with the Publication of Information Direction 1999 (England);
 - (d) comply with all requests by the Council to procure the attendance of specific employees at any meetings of the Council at which this Agreement is to be discussed.
- 24.4 The Council shall at all times act reasonably in making or refraining from making requests of the Contractor in connection with the performance, satisfaction and discharge of the Council's Best Value Duty

25. SEVERANCE

- 25.1 If at any time any provision of this Agreement is or becomes invalid or illegal in any respect, such provision shall be deemed to be severed from this Agreement but the validity, legality and enforceability of the remaining provisions of this Agreement shall not be effected or impaired thereby.

26. COUNTERPARTS

- 26.1 This Agreement may be executed in any number of Counterpart, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument

IN WITNESS WHEREOF this document has been executed as a deed the day and year first before written

SCHEDULE 1

FRAMEWORK OBJECTIVES

The core objective is to enhance the delivery of Manchester City Council's regeneration objectives by achieving educational excellence for all, through a transparent and continuously improving process for design and delivery of quality learning facilities.

The Primary Objectives are to :

- Deliver an effective design and delivery process by
 - reducing uncertainty,
 - delivering best value,
 - harnessing innovation,
 - reducing red tape,
 - involving key stakeholders in the design process
 - from the outset.

- Raise educational standards for all by:
 - providing opportunities for all,
 - improving the environment for learning and
 - working through better design,
 - change cultures and aspirations.

- Contribute to neighbourhood renewal by:
 - improving training, repopulation and quality
 - of life,
 - focussing the school at the centre of the community,

widening the educational perspectives of the community,
contributing to Manchester City Council's long term
strategy.

The Parties objectives relating to Project delivery

The Parties agree to act:

- in good faith

- in an open and trusting manner

- in a co-operative way

- in away to avoid disputes by adopting a 'no blame culture'

- fairly towards each other; and

- valuing the skills and respecting the responsibilities of each other.

SCHEDULE 2

Framework Rates

The following overhead and profit figures are abstracted from the Proposals of the Contractors (overheads adjusted and balanced by negotiation to achieve standardisation of profit levels at 3 %) and will apply to all Projects procured under this Agreement for the Agreement Period.

	<Contractor>	<Contractor>	<Contractor>
C1 Project (£500k)			
O/hd %	<figure>	<figure>	<figure>
Profit %	<figure>	<figure>	<figure>
C2 Project (£2.15m)			
O/hd %	<figure>	<figure>	<figure>
Profit %	<figure>	<figure>	<figure>
C3 Project (£5m)			
O/hd %	<figure>	<figure>	<figure>
Profit %	<figure>	<figure>	<figure>

Overhead percentage additions for any given value of schemes will be as follows:-

Value below C1 value, overhead percentage as C1 percentage

Value above C3 value, overhead percentage as C3 percentage

Value between C1 and C2 value, overhead percentage pro rata C1 and C2 percentage

Value between C2 and C3 value, overhead percentage pro rata C2 and C3 percentage

Preliminaries costs and design costs, will be negotiated and agreed as appropriate (pursuant to clause 8 hereof) based on the Contractors respective Proposals on each individual Project during the Agreement Period

Day Rate / Hourly Rate costs (where applicable) will be agreed as appropriate (based on the Day Rate / Hourly Rate commercial submissions of each Contractor pursuant to its Proposals on each individual Project during the Agreement Period.

SCHEDULE 3

Key Performance Indicators (KPI's)

The performance of the partners in this Framework will be measured and assessed in line with the following indicators.

The objective is to achieve continuous improvement throughout the duration of this Framework, and the feedback from these indicators will highlight levels of performance, which in turn will influence decisions regarding work allocation to the constructor partners with regard to future schemes to be procured through this partnership.

1. Client Satisfaction - Service

How satisfied are clients with the service provided by the constructor team.

2. Client Satisfaction – Product

How satisfied are clients with the service provided by the constructor team.

3. Construction Cost

Measures the improvement year on year of the change in the cost of construction.

4. Construction Time

Measures the year on year change in the time to construct nominally identical projects.

5. Defects

Client's assessment of the condition on the product/facility with respect to defects at the time of handover.

6. Predictability - Cost

Cost variance expressed as a percentage of Target Cost for design and construction

7. Predictability – Time

Project time variance expressed as a percentage of Tender Programme for design and for construction.

8 Construction Partner satisfaction

Description

How satisfied is the Constructor partner with the service provided by the client.

9. Safety

Issues to Resolve

Assessment of accidents on individual sites to be agreed.

10. Supply Chain Satisfaction

Description

How satisfied are the supply chain Sub Contractors with the service provided by the Constructor Partner.

Schedule 4
Form of Collateral Warranty to Council

DATED _____ 200

[_____]

and

THE COUNCIL OF THE CITY OF MANCHESTER

**DEED OF
COLLATERAL WARRANTY**

THIS DEED OF COLLATERAL WARRANTY is made on _____ 200

BETWEEN:

[_____] (Company Number [_____]) whose registered office is
at [_____] (the "**Sub-Contractor**");

and

THE COUNCIL OF THE CITY OF MANCHESTER of the Town Hall Manchester M60 2LA (the "Council").

RECITALS:

- (A) The Council has entered into an agreement dated [] with [] ("the Contractor") in respect of works relating to construction [and design] of [education premises] at []
- (B) Pursuant to a contract dated [] ("the Sub-Contract") the Sub-Contractor has been appointed by the Contractor to carry out certain works referred to in the Sub-Contract comprising inter alia [works]
- (c) The Sub-Contractor has agreed to enter into this Deed for the benefit of the Council and its successors in title and assigns

OPERATIVE PROVISIONS:

Definitions and Interpretations

In this Deed:

"**Work**" means the works to [design and] construct []

"**Proprietary Material**" means all drawings, details, plans, specifications, schedules, reports, calculations and other work (and the designs contained within them) prepared or to be prepared by or on behalf of the Sub-Contractor in connection with the Sub-Contract; and

In this Deed unless the context otherwise requires:

clause headings are inserted for convenience only and shall not affect the construction of this Deed and all references to clauses and sub-clauses are to clauses and sub-clauses of this Deed;

words denoting the singular number include the plural and vice versa;

references to persons include references to bodies corporate and unincorporate; and

references to statutes or statutory instruments include references to any modification, extension or re-enactment thereof from time to time.

Obligations of the Sub-Contractor

The Sub-Contractor warrants and undertakes to the Council that:

it has exercised and will continue to exercise all the reasonable skill, care and diligence which may reasonably be expected of an experienced and competent sub-contractor experienced in works comparable in size, scope and complexity to the Work and within the scope of the Sub-Contract; and

it he has observed and performed and will continue to observe and perform all the terms and obligations on its part to be observed and performed under the Sub-Contract.

2.2 The Sub-Contractor further warrants and undertakes to the Council that:

- (a) it has exercised and will exercise reasonable skill, care and diligence in:
 - (i) the design of that part of the Work the subject of the Sub-Contract which may reasonably be expected of an experienced and competent professional de-

signer experienced in designing works comparable in size, scope and complexity to the Work;

- (ii) the selection of good and materials for the Work
- (b) the Work will, on completion, satisfy all performance specifications and other requirements contained or referred to in the Sub-Contract
- (c) the Work and all materials and goods comprised in them will correspond as to description, quality and conditions with the requirements of the Sub-Contract and will be of sound manufacture and workmanship
- (d) the Work will comply with all applicable statutory requirements

PROVIDED ALWAYS THAT in relation to any claim for breach of the warranties or undertakings in clauses 2.1 or 2.2 above:-

- (i) the Sub-Contractor shall owe no greater obligations to the Council than it owes to the Contractor under the Sub-Contract, and
- (ii) the Sub-Contractor shall be entitled in any action or proceedings by the Council to rely on any limitation in the Sub-Contract and to raise the equivalent rights in defence of liability as it would have against the Contractor thereunder, and
- (iii) the liability of the Sub-Contractor to the Council shall be the repair, renewal, rectification and/or making good at its own expense (or the reasonable costs of the Council in relation to such repair, renewal, rectification and/or making good) of any damage to and/or defect in that part of the Work the subject of the Sub-contract and/or any loss or damage to property of the Council arising out of any breach or failure by the Sub-Contractor to observe and perform the provisions of this Deed, and
- (iv) save for any reasonable legal or expert costs incurred by the Council in relation to (iii) above the Sub-Contractor shall not be liable for any losses of the Council other than those referred to in (iii) above. The Sub-Contractor shall have no liability in respect of any loss or damage suffered by the Council where the Contractor has made a claim or raised proceedings and recovered damages in respect of such loss and damage and the Contractor has failed to apply such damages in works of rectification or remedy referred to in (iii) above or has failed to account to the Council (where the Council is so entitled) for the whole or relevant proportion of such damages.

Responsibility

The Sub-Contractor acknowledges that the Council shall be deemed to have relied upon the Contractor's reasonable skill, care and diligence in respect of those matters relating to the Work which lie within the scope of the Sub-Contract.

No involvement by the Council in considering whether or not to grant any consent or approval or in attending (or failing to attend) meetings or otherwise in inspecting or omitting to inspect that part of the Work the subject of the Sub-Contract in any way relieves or affects the duties of the Sub-Contractor.

Copyright

The Sub-Contractor grants to the Council an irrevocable, royalty-free, non-exclusive licence, to use and to reproduce any or all of the Proprietary Material for any purpose whatsoever connected with the Work including, but without limitation, the execution, completion, maintenance, letting, occupation, management, sale, advertisement, extension, alteration, rein-

statement and repair thereof. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the termination (for any reason) of the Sub-Contractor's engagement under the Sub-Contract, provided always that the Sub-Contractor shall not be liable for the consequences of any use of the Proprietary Material for any purpose other than that for which the same were prepared.

Insofar as the Sub-Contractor is the author (as referred to in the Copyright, Designs and Patents Act 1998) of the Proprietary Material and of the Work, the Sub-Contractor waives any moral rights which it might otherwise be deemed to possess under Chapter IV of such Act in respect of the same. The Sub-Contractor shall procure for the Council a corresponding waiver from the author (as referred to in such Act) of the remainder of the Proprietary Material and of the Work in respect of the same.

The Sub-Contractor agrees on request at any time to give to the Council or any persons authorised by the Council access to the Proprietary Material and shall provide copies of any or all of the Proprietary Material to the Council upon request and upon payment by the Council of the Sub-Contractor's reasonable copying charges in connection therewith.

The Sub-Contractor shall procure that any sub-contractor or third party providing any Proprietary Material shall grant an irrevocable, royalty-free non-exclusive licence in the same terms *mutatis mutandis* to the Council

All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the Sub-Contract shall be paid by the Sub-Contractor and the Sub-Contractor shall indemnify the Council from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Council by reason of the Sub-Contractor infringing or being held to infringe any intellectual property rights in the course of or in connection with the Sub-Contract

Insurance

The Sub-Contractor undertakes to the Council to maintain with reputable insurers or underwriters, from the date hereof and for a period expiring no earlier than 12 years after Completion of the Work and notwithstanding the termination for any reason of the Sub-Contractor's engagement under the Sub-Contract, professional indemnity insurance without onerous conditions or unusual excesses to cover each and every professional liability which it may incur under this Deed, with a limit of indemnity of not less than [£5 million] in respect of each and every claim, provided always that such insurance continues to be generally available in the market upon reasonable terms and at commercially reasonable premium rates.

As and when reasonably required by the Council the Sub-Contractor shall produce for inspection satisfactory documentary evidence that the insurance referred to in clause 5.1 is being properly maintained and confirm that payment has been made in respect of the last preceding payment due under it.

The Sub-Contractor shall forthwith notify the Council if such insurance ceases to be available upon reasonable terms and at commercially reasonable premium rates or if for any other reason the Sub-Contractor is unable to continue to maintain such insurance.

6 Prohibited Materials

6.1 The Sub-Contractor warrants to the Council that it has used and shall continue to use his reasonable skill care and diligence to ensure that none of the following prohibited materials is specified for use in relation to the Work:

any of the materials identified as potentially hazardous in the British Property Federation/British Council for Offices report *Good practice in the selection of construction materials* (current edition), other than in accordance with the recommendations as to good practice contained in section 2 of that report; and

**DEED OF
COLLATERAL WARRANTY**

THIS DEED OF COLLATERAL WARRANTY is made on 200

BETWEEN:

[] **Limited** (Company Number []) whose registered office is at [] the "**Contractor**";

and

.....**School** of (the "**School**").

RECITALS:

- (A) Manchester City Council has entered into an agreement dated [] with " the Contractor" in respect of works relating to the design construction of [education premises] at []
- (B) The Contractor has agreed to enter into this Deed for the benefit of the School and its successors in title and assigns

OPERATIVE PROVISIONS:

Definitions and Interpretations

In this Deed:

"Work" means the works to [design and] construct []

"Proprietary Material" means all drawings, details, plans, specifications, schedules, reports, calculations and other work (and the designs contained within them) prepared or to be prepared by or on behalf of the Contractor in connection with the Contract; and

In this Deed unless the context otherwise requires:

clause headings are inserted for convenience only and shall not affect the construction of this Deed and all references to clauses and sub-clauses are to clauses and sub-clauses of this Deed;

words denoting the singular number include the plural and vice versa;

references to persons include references to bodies corporate and unincorporate; and

references to statutes or statutory instruments include references to any modification, extension or re-enactment thereof from time to time.

Obligations of the Contractor

The Contractor warrants and undertakes to the School that:

it has exercised and will continue to exercise all the reasonable skill, care and diligence which may reasonably be expected of an experienced and competent contractor experienced in works comparable in size, scope and complexity to the Work and within the scope of the Contract; and

it he has observed and performed and will continue to observe and perform all the terms and obligations on its part to be observed and performed under the Contract.

2.2 The Contractor further warrants and undertakes to the School that:

- (e) it has exercised and will exercise reasonable skill, care and diligence in:
 - (i) the design of that part of the Work the subject of the Contract which may reasonably be expected of an experienced and competent professional designer experienced in designing works comparable in size, scope and complexity to the Work;
 - (ii) the selection of good and materials for the Work
- (f) the Work will, on completion, satisfy all performance specifications and other requirements contained or referred to in the Contract
- (g) the Work and all materials and goods comprised in them will correspond as to description, quality and conditions with the requirements of the Contract and will be of sound manufacture and workmanship
- (h) the Work will comply with all applicable statutory requirements

PROVIDED ALWAYS THAT in relation to any claim for breach of the warranties or undertakings in clauses 2.1 or 2.2 above:-

- (i) the Contractor shall owe no greater obligations to the School than it owes to the Council under the Contract, and
- (ii) the Contractor shall be entitled in any action or proceedings by the School to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability as it would have against the Council thereunder, and
- (iii) the liability of the Contractor to the School shall be the repair, renewal, rectification and/or making good at its own expense (or the reasonable costs of the School in relation to such repair, renewal, rectification and/or making good) of any damage to and/or defect in that part of the Work the subject of the Contract and/or any loss or damage to property of the School arising out of any breach or failure by the Contractor to observe and perform the provisions of this Deed, and
- (iv) save for any reasonable legal or expert costs incurred by the School in relation to (iii) above the Contractor shall not be liable for any losses of the School other than those referred to in (iii) above. The Contractor shall have no liability in respect of any loss or damage suffered by the School where the Council has made a claim or raised proceedings and recovered damages in

respect of such loss and damage and the Council has failed to apply such damages in works of rectification or remedy referred to in (iii) above or has failed to account to the School (where the School is so entitled) for the whole or relevant proportion of such damages.

Responsibility

The Contractor acknowledges that the School shall be deemed to have relied upon the Contractor's reasonable skill, care and diligence in respect of those matters relating to the Work which lie within the scope of the Contract.

No involvement by the School in considering whether or not to grant any consent or approval or in attending (or failing to attend) meetings or otherwise in inspecting or omitting to inspect that part of the Work the subject of the Contract in any way relieves or affects the duties of the Contractor.

Copyright

The Contractor grants to the School an irrevocable, royalty-free, non-exclusive licence, to use and to reproduce any or all of the Proprietary Material for any purpose whatsoever connected with the Work including, but without limitation, the execution, completion, maintenance, letting, occupation, management, sale, advertisement, extension, alteration, reinstatement and repair thereof. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the termination (for any reason) of the Contractor's engagement under the Contract, provided always that the Contractor shall not be liable for the consequences of any use of the Proprietary Material for any purpose other than that for which the same were prepared.

Insofar as the Contractor is the author (as referred to in the Copyright, Designs and Patents Act 1998) of the Proprietary Material and of the Work, the Contractor waives any moral rights which it might otherwise be deemed to possess under Chapter IV of such Act in respect of the same. The Contractor shall procure for the School a corresponding waiver from the author (as referred to in such Act) of the remainder of the Proprietary Material and of the Work in respect of the same.

The Contractor agrees on request at any time to give to the School or any persons authorised by the School access to the Proprietary Material and shall provide copies of any or all of the Proprietary Material to the School upon request and upon payment by the School of the Contractor's reasonable copying charges in connection therewith.

The Contractor shall procure that any Sub-Contractor or third party providing any Proprietary Material shall grant an irrevocable, royalty-free non-exclusive licence in the same terms *mutatis mutandis* to the School

All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the Contract shall be paid by the Contractor and the Contractor shall indemnify the School from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the School by reason of the Contractor infringing or being held to infringe any intellectual property rights in the course of or in connection with the Contract

Insurance

The Contractor undertakes to the School to maintain with reputable insurers or underwriters, from the date hereof and for a period expiring no earlier than 12 years after Completion of the Work and notwithstanding the termination for any reason of the Contractor's engagement under the Contract, professional indemnity insurance without onerous conditions or unusual excesses to cover each and every professional liability which it may incur under this Deed, with a limit of indemnity of not less than [£5 million in the aggregate] in respect of each and every

claim, provided always that such insurance continues to be generally available in the market upon reasonable terms and at commercially reasonable premium rates.

As and when reasonably required by the School the Contractor shall produce for inspection satisfactory documentary evidence that the insurance referred to in clause 5.1 is being properly maintained and confirm that payment has been made in respect of the last preceding payment due under it.

The Contractor shall forthwith notify the School if such insurance ceases to be available upon reasonable terms and at commercially reasonable premium rates or if for any other reason the Contractor is unable to continue to maintain such insurance.

6.1

6 Prohibited Materials

6.1 The Contractor warrants to the School that it has used and shall continue to use his reasonable skill care and diligence to ensure that none of the following prohibited materials is specified for use in relation to the Work:

any of the materials identified as potentially hazardous in the British Property Federation/British Council for Offices report *Good practice in the selection of construction materials* (current edition), other than in accordance with the recommendations as to good practice contained in section 2 of that report; and

any other materials which do not comply with relevant British Standard specifications (or their European Union equivalent) and codes of practice or are otherwise generally known within the Contractor's profession at the time of specification or use to be deleterious to health and safety or to the durability of the project in the particular circumstances in which they are used.

7 Assignment by the School

7.1 The School may at any time assign, charge or transfer the entire benefit of this Deed and any rights arising hereunder to any third party upon notice to the Contractor without the consent of the Contractor being required, provided that not more than two such assignments to a third party shall be permitted.

7.2 Nothing in this Deed shall purport to confer on any third party a right to enforce any term of this Deed for the purposes of the Contracts (Rights of Third Parties) Act 1999.

8 Limitation Period

8.1 The liability of the Contractor under this Deed shall cease 12 years following date of issue of Certificate of Practical Completion of the Work the subject of the Contract.

9 Law and Jurisdiction

9.1 This Deed shall be governed by, and construed in accordance with, English law and any dispute or difference arising hereunder shall be subject to the jurisdiction of the English Courts.

10 Confidentiality

10.1 Except with the consent in writing of the School the Contractor shall not (and shall ensure that its Sub-Contractors do not) make use of any information issued or provided by or on behalf of the School otherwise than for the purpose of complying with its obligations under the Contract

11 Notices

Schedule 6

Cost Reimbursement Model and Sharing of Saved Amounts

THE COMMON SEAL of THE COUNCIL
OF THE CITY OF MANCHESTER was
hereunto affixed in pursuance of an
Order of the Council of the said City: -

Authorised Signatory

2. EXECUTED by <Contractor> AS A DEED acting by one Director and its Secretary/two Directors whose signatures are here subscribed namely

.....

(Signature)

(Director)

.....

(Signature)

(Director/Secretary)

3. EXECUTED by <Contractor> Ltd AS A DEED acting by one Director and its Secretary/two Directors whose signatures are here subscribed namely

.....

(Signature)

(Director)

.....

(Signature)

(Director/Secretary)

4. EXECUTED by <Contractor> AS A DEED acting by one Director and its Secretary/two Directors whose signatures are here subscribed namely

.....

(Signature)

(Director)

.....

(Signature)

(Director/Secretary)