



**Contract for Facilities Services**  
**CAMPUS: Birmingham and/or Doncaster**

AN AGREEMENT made this                      day of                      2017 between:

- (1) THE NATIONAL COLLEGE FOR HIGH SPEED RAIL of Faraday Wharf, Innovation Birmingham Campus, Holt Street, Birmingham Science Park, Aston, Birmingham, B7 4BB ("the College"), and
- (2) .....whose registered office is situated at ..... Company Registration No:                      ("the Contractor")

**WHEREAS**

- (A) The National College for High Speed Rail wishes to provide FM services to its students and staff;
- (B) ..... (the Contractor) has recognised expertise in the field of the provision of FM services.
- (C) The College wishes to appoint the Contractor for the purpose of providing FM services to the College's authorised customers on behalf of the College and as the College's supplier to supply to the College all commodities and other consumable items to be used in the provision of the FM Services as agreed.
- (D) The Contractor wishes to be appointed as the College's FM Contractor.

**IT IS HEREBY AGREED AS FOLLOWS:**

**1. DEFINITIONS**

- 1.1 "Authorised Customers" means any students or staff of the College together with such persons as the College shall authorise or permit to use the FM Services on the premises.
- 1.2 "the Commencement Date" means 1 August 2017.
- 1.3 "the FM Services" means the provision of goods and services to such standards, in such manner, at such times and at such tariffs as defined by this Agreement.
- 1.4 "the Initial Term" means One year commencing on the Commencement Date. Plus three optional months (additional).
- 1.5 "Landlord" means The National College for High Speed Rail.

The National College

1.6 "Net Cost of FM" has the meaning assigned to it in clause 13 below.

1.7 "Nominated Suppliers" means all suppliers nominated by the Contractor and accepted by the College for the supply of goods and services required in the provision of the FM Services.

1.8 "the Premises" means The National College for High Speed Rail, being two separate campuses – at Birmingham and at Doncaster. The Contractor may bid for one of the two campuses or for both.

1.9 "Relevant Supplies" means all supplies and other consumable items to be used in the provision of the FM Services as agreed.

## **2. PURPOSE OF AGREEMENT**

2.1 The National College for High Speed Rail hereby appoints the Contractor to undertake the provision of the Core FM Services on behalf of the College at the Premises and the Contractor agrees to act in that capacity.

2.2 During the term of this Agreement The National College for High Speed Rail will not appoint any other Contractor to provide the Core FM Services at the premises.

## **3. DURATION OF AGREEMENT**

3.1 Subject to clause 18 this Agreement will continue for the Initial Term unless extended for the optional three month period or terminated earlier in accordance with Clause 18.

## **4. RIGHTS AND DUTIES**

4.1 The Contractor will:

- ii) ensure that suitably trained staff and skilled staff are utilised to operate the FM Services and administer and pay their wages and associated costs,
- iii) prepare annual budgets in respect of the FM Services,
- v) maintain public liability insurance cover, to a minimum of £10m.
- vii) keep VAT records for and on behalf of the College in respect of the FM Services,
- viii) account to the College in accordance with clauses 11 and 13 below,
- ix) receive remuneration in accordance with clauses 12.

4.2 The College will:

- i) provide heat, light, power, fuel, water, waste disposal and ventilation for reasonable use in the provision of FM services to the College, together with office facilities including telephone lines for the use of the Contractor's staff.

- ii) maintain any Security Systems and Fire Alarm and Fire Safety Systems.
- iii) provide training for the onsite FM manager and team on the use of security, fire alarm and fire security systems where appropriate.
- v) effect and maintain insurance in respect of the Premises.

## **5. CONTRACTORS OBLIGATIONS**

5.1 The Contractor shall provide Services in accordance with the Contract Standards namely:

- a) the Specification, as agreed from the tender submitted by the Contractor;
- b) the Contractors own quality assurance provisions and systems;
- c) the Contractors own Health and Safety Policy and provisions;
- d) all relevant legislation including but not limited to the Health and Safety Act 1974 and Employment Legislation including the Equalities Act 2010.

5.2 The College shall nominate a representative to monitor the Contract Standards and if dissatisfied with regard to the standard of Services, shall notify the Contractor's representative, either in writing or by oral direction, of the matter complained of, or the failure in Contract Standards and direct that it be remedied to the College's satisfaction within 20 working days (or such other time period as is reasonable in the circumstances)

5.3 The College's appointed representative and the Contractor's representative will hold review meetings on an agreed basis. The agenda will be mutually agreed in advance but will in any case include a full review of the Services, Contract Standards, Financial performance against budget and forthcoming events/ activities that will impact on the Services. This meeting will be minuted by the Contractor's representative and suitable action plans will follow within 10 working days of the meeting taking place. Any written reports or documentation to support the meetings between the College's appointed representative and the Contractor's representative meetings must be submitted to those attending at least 3 working days in advance of the meeting.

## **6. SERVICE SCOPE**

6.1 The Services shall be provided during the full term of contract and at other times by mutual agreement and shall be agreed within the Service Level Agreement.

6.2 Additional services may be required to be provided. Such requests for additional services at special functions shall be made to the Contractor by the authorised representatives from the College and agreed between the parties in writing.

6.3 The College and the Contractor recognise their mutual interest in maximising the use of the FM facilities beyond normal College hours and will cooperate to provide such services whenever there is a reasonable level of demand.

6.4 The College shall make available to the Contractor all information regarding activities within the College calendar that may impact on service provision. The Contractor should manage this information in a proactive manner and make every effort themselves, using their expertise in operating within the Education Sector, to source information within the College to help minimise the impact on costs, site availability and Services.

## **7. EQUIPMENT OWNERSHIP, MAINTENANCE AND STANDARDS**

7.1 Within one month of the Commencement Date, the Contractor shall complete an audit of all FM equipment on site in the FM Areas covering, but not limited to, a list of all items, condition and ownership of the same and agree this with the College. This audit will be reviewed annually along with a recommended plan of renewal, repair and maintenance of such equipment to be agreed with the College.

7.2 College – owned equipment shall belong to and remain in the ownership of the College. Cleaning of equipment where applicable shall be the responsibility of the Contractor.

7.3 When equipment is acquired by the College, for the provision of the FM service, the College will give license to the Contractor to use it for the provision of the FM services at the College.

7.4 All equipment must be compliant with current legislation, including all guarding and interlocking safety devices. The Contractor shall bring to the attention of the College any proposed changes in legislation affecting such equipment of which it becomes aware, and the College will appropriately modify and upgrade the equipment.

7.5 Any equipment that the Contractor wishes to introduce must comply with current relevant legislation and must be agreed with the College before it is installed/used.

7.6 Maintenance and repair of the equipment owned by the College is the responsibility of the College. The College shall ensure that all equipment is maintained by a competent person at a frequency recommended by the manufacturer, or legislative requirements whichever is sooner. The Contractor will be responsible for appropriate cleaning of such equipment, take due care of it, and ensure all appropriate staff are trained in its use.

7.7 The Contractor must take responsibility for reporting any defects in the equipment of which it becomes aware to the appropriate representatives of the College and following the procedures in place for so doing. The repairs should be completed in a time frame agreed with the Contractor's representative and that of the College. Where the equipment is critical to the operation of the unit and service delivery, a decision shall be made by the Contractor as to the level of service that can still

be offered in line with good practice and other relevant Health and Safety legislation requirements. The Contractor must consult with the College during this decision making process, ensuring clear communication.

## **8. STAFF AND SUBCONTRACTORS**

8.1 The Contractor shall be entitled to direct the day to day activities of any staff working in the FM service. The Contractor will ensure that any such staff or authorised subcontracted staff, shall neither act nor be required to act in any manner in contravention of any legal or statutory requirement or of the policies and procedures and ethos of the College.

8.2 The Contractor shall ensure that its Managers at all times monitor the operational standards of the FM services staff and that working practices and standards are such that all elements of the day to day service are maintained at the highest levels and within the requirements of all legislation and statutory requirements related to the provision of FM services within Colleges and those required by the College and in recognition of its ethos.

8.3 The College reserves the right to require the removal of any employee of the Contractor from employment at the College where that person is deemed to be inimical to the delivery of the service (and the College agrees to be responsible for any direct costs incurred by the Contractor in complying with such request provided that the Contractor shall use reasonable endeavours to mitigate such costs). This right will not be used vexatiously by the College.

8.4 The College reserves the right to be consulted during the recruitment process of all staff to be employed in the provision of the Services on the Premises and to be actively involved in the recruitment process for any FM manager to be appointed to the College, and to be involved in any decisions made as to an appointment of such persons.

8.5 The Contractor shall not materially change staffing levels used to provide the FM services to the College without prior consultation with the College and due justification for such changes.

8.6 The Contractor shall be responsible for the payment of salaries and wages (including sick pay and holiday pay) of its employees and all Employer's and Contractor contributions of its employees for the service from the Commencement Date. The Contractor shall also be responsible for the payment of all fees and wages of relief personnel and persons acting on its behalf in the provision of FM services outside the Budget or as additional services agreed between parties.

8.7 The Contractor is directly responsible for its own employees in relation to health and safety matters on the Premises and shall in conjunction with The College take responsibility to ensure safe operation of the FM facility. The Contractor shall comply with the College's Health and Safety policy and procedures at all times, including Safeguarding.

8.8 It is acknowledged by the College it may be necessary for the Contractor to subcontract work to third parties. This must be in full consultation with the College and agreed by the College. The Contractor will take full responsibility for such subcontracted workers whilst on the Premises to fully

comply with all current Health and Safety Legislation and policies and procedures and those of the College, including Safeguarding (DBS).

8.9 All staff of the Contractor or sub-Contractors shall be dressed in correct uniforms and wear identifiable name badges, including protective clothing as required by current Health and Safety legislation. Uniforms are to be approved by the College and provided at the expense of the Contractor and shall be kept clean and in good repair. All staff will be presentable and will practise high standards of personal hygiene.

## **9. RISK AND PROPERTY**

9.1 The Contractor shall not be responsible for any loss or damage to the facilities or other of the College's property or premises by fire, storm, flood, explosion or any other cause not being due to the negligence of the Contractor including any loss or damage occasioned by or directly or indirectly attributable to any defect breakdown severance disconnection fusing or disruption of any public or private utility service it.

9.2 The Contractor shall not do or permit or suffer to be done any act or omission which may be or become a nuisance or inconvenience to the owners lessees or occupiers of any premises adjoining or neighbouring to the facilities.

9.3 The Contractor shall not without the knowledge of the College do or permit or suffer to be done in or upon or to the facilities or any part thereof anything which might otherwise render any insurance policy void or voidable or whereby the rate of insurance may be increased and in the event of any insurance money being wholly or partially irrecoverable by reason solely or in part of any act or default of the Contractor, its servants, agents or licensees, then and in every such case the Contractor shall immediately pay to the College the whole or a fair proportion of professional and other fees of making good all such damage, that fair proportion to be determined by an arbitrator acceptable to both parties whose decision shall be final and binding on the parties.

## **10. STATUS AND INDEMNITY**

10.1 It is hereby acknowledged by both parties that neither this nor any other Agreement constitutes the authority for the Contractor to make warranties or enter into any binding commitment on behalf of the College. In the event of any such liability attaching to the College as a direct result of the actions or default of the Contractor in making any such warranty or entering into any such binding commitment without the authority of the College, the Contractor fully indemnifies and holds indemnified the College against any loss damage or expense arising there from.

Provided always that this indemnity shall not include or be deemed to include any claim which arises by reason of any default by the College in respect of its obligations under this Agreement or of any defect in the facilities or any breach of statutory obligation by the College.

## **11. ACCOUNTING BY THE CONTRACTOR**

11.1 The Contractor will account to the College for all sums received by the Contractor on behalf of the College as consideration for the supply of the FM Services in accordance with the procedures for accounting set out in this clause 11 and clause 12 below.

11.2 The Contractor will provide a monthly reconciliation of the FM expenditure against income received.

11.3 The Budget and the arrangements set out in Clause 13 have been and shall subsequently be agreed on the basis of information submitted by the College to the Contractor and said arrangements shall be subject to renegotiation between the Contractor and the College in the following circumstances:

11.3.1 in the event that any strikes, lockouts, riot, war, fire or reduction or unavailability of power or other services or any other circumstances (whether or not of a similar nature to the foregoing) over which the Contractor has no control causes the cessation of or a substantial interference with, or affects the costs of, the supply of the Relevant Supplies and/or the provision of the FM Services; or

## **12. REIMBURSEMENT OF CONTRACTOR'S EXPENSES**

12.1 The College will reimburse the Contractor in respect of all expenses properly incurred by the Contractor in the provision by it of the FM Services as agent on behalf of the College.

12.2 The expenses in respect of which the Contractor is entitled to be reimbursed shall include (but are not limited to):

12.2.1 the cost, including VAT where appropriate, of employing staff engaged in performance of the FM Services in accord with the Tender.

12.2.2 the invoiced cost, including VAT where appropriate, of all other items procured in connection with the provision of the FM Services as agreed with the College in advance.

12.3 The Contractor shall be entitled to be paid/reimbursed the full amount of all invoices from third parties for goods and services (not being Relevant Supplies pursuant to clause 18 of this Agreement) supplied for the provision of the FM Services (including invoices which are payable to the issuer of the invoice by the Contractor) and in accordance with the procedures for accounting set out in clause 13 below notwithstanding any arrangements made between the Contractor and the supplier of those goods or services as to the amount or timing of payment to the supplier in respect of those invoices.

12.4 The College will reimburse to the Contractor the amount of any redundancy and staff termination costs, except for those relating to periods prior to this contract, and any basic and/or compensatory awards and/or awards of damages of whatever nature (arising during or on or after termination of this Agreement) in respect of the Contractor's staff employed at the Premises

(including those previously employed by the Contractor or others at the Premises prior to the Commencement Date) resulting from:

- (i) implementation of initiatives directed by or agreed to by the College;
- (ii) closure of FM facilities at the Premises;
- (iii) downsizing or reconfiguration of the FM Services at the Premises,

provided always that the Contractor mitigates any such costs to the extent that it is reasonably able to do so (for example by redeploying staff).

### **13. PAYMENTS, ACCOUNTS AND INVOICING**

13.1 The Contractor will render an account to the College at monthly intervals in arrears.

13.2 An Operating Statement for the month shall show as debited to the College the amounts described in clause 13.3 below and as credited to the College the amounts described in clause 13.4 below.

#### **13.3 Amounts debited to the College**

13.3.1 the amount in respect of which the Contractor is entitled to be reimbursed/paid in accordance with clause 12 above; and

13.3.2 the pro-rata proportion of the Contractor's Management Fee payable, plus VAT as appropriate.

#### **13.4 Amounts credited to the College**

13.4.1 the amounts received by the Contractor on behalf of the College in respect of which it is liable to account to the College in accordance with clause 11 above.

13.5 The difference between the amounts debited to the College and the amounts credited to the College is referred to as the "Net Cost of the FM Services".

13.6 The Contractor has guaranteed .....*Cost of FM* to the College for the period of the contract term as per the Tender document submitted on .....

13.7 An invoice shall be raised for all additional services not covered by the Tender (as agreed between the parties) provided to the College. In the event that any part of an account submitted is disputed, the undisputed amount shall be paid (with the applicable VAT if any) within 30 days of the invoice date and the parties shall use their best endeavours to resolve the dispute and have the final balance paid as soon as possible.

### **14. HEALTH & SAFETY**

14.1 The Contractor will ensure that the staff engaged in the provision of the FM Services are trained so as to ensure compliance with the requirements of all Acts of Parliament, Regulations, Orders, Bye-laws, Notices and Approved Codes of Practice relating to the FM Services.



14.2 The College will ensure that the Premises and all necessary equipment are fit for their purpose, are regularly inspected and maintained and comply at all times with all Acts of Parliament, Regulations, Orders, Bye-laws, Notices and Approved Codes of Practice, albeit the Contractor maintains a responsibility for communicating any defects or operational issues with said equipment as stated in Clause 7 above.

## **15. VARIATIONS**

15.1 This Agreement may only be varied by written agreement signed by authorised representatives of each party.

15.2 The Contractor shall bring to the Client's attention any matter outside of the control of the Contractor and which has an adverse effect on any financial guarantee and/or service level agreement including, but not limited to, any action taken by the Client and/or any other party and which means that the financial guarantee or service level agreement is unachievable in the circumstances.

15.3 The Contractor shall prepare costed alternatives to alleviate the matter which has given rise to the adverse effect, and the parties shall reappraise the budget including any financial guarantees. In the event that the Client chooses not to adopt the costed proposal, then the Contractor shall be under no obligation to the Client in respect of any such financial guarantee and/or service level agreement.

## **16. CONFIDENTIALITY**

16.1.1 The Contractor undertakes not to at any time during the term of this agreement or at any time following the termination of this agreement to divulge or allow to be divulged to any person confidential information relating to the business of the College.

16.1.2 The College undertakes not to at any time during the term of this agreement or at any time following the termination of this agreement to divulge or allow to be divulged to any person confidential information relating to the business of the Contractor.

16.1.3 Not without the prior written consent of the other disclose confidential information belonging to the other in whole or part to any third party save to its employees or subcontractors involved in the provision or receipt of services who need to know the confidential information in question and who are bound by obligations of confidentiality that are no less stringent than those set out in clause 16.3 below.

16.1.4 Use the confidential information belonging to the other solely in connection with the provision or receipt of the services and not for its own benefit or the benefit of any third party.

16.2 Clause 16.1.1 & 2 above shall not apply to any information which:

16.2.1 is or becomes public knowledge other than by breach of clause 16.3 below;

16.2.2 is in the possession of the receiving party without restriction before the date of its receipt from the disclosing party;

16.2.3 is received from a third party who acquired it lawfully and under no obligation of confidentiality;

16.2.4 is independently developed without any access to any confidential information belonging to the other party;

16.2.5 specifically relates to the performance of the contract.

### 16.3 Freedom of Information Act 2000 ("FOIA")

All information relating to any tender made to the College or any contract or agreement to which the College is party, including information arising under this Contract or about its performance, will be covered by the FOIA from 1 August 2017 (or date of implementation if different). The College will be under a legal obligation to disclose such information, if requested, unless an exemption applies. The legal obligation to respond to a request for information falls to the College. The College must determine whether an exemption applies to information and whether the request should be refused. The College may also be subject to disclose obligations under legislation or codes of practice. The Contractor recognises that the College is subject to such legal duties and that the College may under an obligation to provide information on request. Such information may include matters relating to, arising out of, or under this Contract in any way. The Contractor accepts that each request for information must be considered individually and that any decision to disclose information will be the decision of the College.

In the event that any request is made under FOIA or other relevant legislation or Codes of practice which relates to the Contractor, the Services, the Contract Price or any other matter, which falls under the auspices of this Contract, the College shall seek to consult with the Contractor prior to disclosure. The guiding principle of the College will be that all information shall be disclosed except where the College, sought the Contractor's views, considers that particular information is or may be, in particular circumstances, subject to an applicable exemption in accordance with the relevant section of the FOIA or other legislation or codes of practice.

If the College at the Contractor's request and cost seeks to rely upon an exemption then in the event that the College incurs any costs, including but not limited to responding to information notices or lodging appeals against a decision of the information Commissioner in relation to disclosure, the Contractor shall indemnify the College. The Contractor shall indemnify the College and hold it harmless from and against all liability costs, claims, actions, losses, damages and expenses whatsoever, arising directly as a result of any decision by the information Commissioner, that occurs as a result of the Contractor's request for an exemption.

## **17. ASSIGNMENT**

17.1 Neither party shall assign this Agreement or any part of this Agreement without the prior written consent of the other party.

## **18. TERMINATION**

18.1 Either party may terminate this Agreement after the Initial Term by at least three months' notice in writing to the other party.

18.2 Either party shall be entitled to terminate this Agreement forthwith by written notice to the other party if:

18.2.1 the College or the Contractor commits a material breach of its obligations under this Agreement and fails to remedy it within 30 days after receipt of notice (to the extent it can be remedied) to that effect specifying the breach and stating what in that party's opinion is required to remedy the breach; or

18.2.2 the Contractor fails to demonstrate adequate control of costs and where the results of such failure may have a bearing on the financial responsibilities or liabilities of the College

18.2.3 if the College or the Contractor becomes subject to a winding-up petition or administration order or has a receiver or administrative receiver appointed over the whole or any part of its assets or makes any voluntary arrangement with either parties' creditors.

18.2.4 there being any order made by any authority under any regulation relating to Health, Safety or Hygiene legislation prohibiting or substantially restricting the provision of the services and such order shall result from any breach by the Contractor of any obligation there under.

18.2.5 in the event of any termination by the College and if the College shall incur any costs associated either with that termination or with its replacement by another Contractor, the College may hold that the Contractor be responsible for those costs incurred.

## **19. SERVICE LEVEL AGREEMENT**

19.1 The College will agree with the Contractor, as part of this Agreement, a "Service Level Agreement", to be agreed within 6 weeks of the contract commencement date.

19.2 Such Service Level Agreement shall form the basis of a periodical Contract Monitoring Process, which shall include factors relating to financial performance, operating standards, customer satisfaction levels, hygiene, health and safety, communication and the pro-active approach of the Contractor in the development of FM Services for the College.

19.3 Where the Contractor is deemed to be negligent in its performance the College shall retain the right to penalise the Contractor up to the level of its management fee entitlement, for the operational period under review.

## **20. RIGHT TO AUDIT**

20.1 The College reserves the right to appoint independent auditors to verify the standards and costs of the services provided by the Contractor and the Contractor agrees to make available (on reasonable written notice) its accounts, records and procedures relating to the FM Services for the purposes thereof (provided always that nothing in this Clause 20 or otherwise shall require the Contractor to disclose any information in respect of which it owes an obligation of confidentiality to a third party and/or which is commercially sensitive).

## **21. GENERAL**

21.1 The failure of either party to pursue or enforce whether in whole or in part at any time for any period any one or more of the obligations of the other party shall not be a waiver of them or of the right at any time subsequently to enforce them and/or all terms of this Agreement.

21.2 Termination of this Agreement shall be without prejudice to either party's rights or obligations then accrued due.

21.3 Neither party shall be liable to the other for any indirect, special or consequential damage nor loss suffered or incurred arising out of or in connection with this Agreement.

21.4 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.6 Nothing in this Agreement shall confer on any third party any benefit or the right to enforce any term of this Agreement.

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

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

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

**Signed** duly authorised for and on behalf of the Contractor: .....

Name.....

Designation .....

Date.....

**Signed** duly authorised for and on behalf of the College .....

Name.....

Designation .....

Date.....