

## **KENT COUNTY COUNCIL**

### **Invitation to Tender for the Provision of Community TV**

## **Section 1 Instructions to Tenderers**

### **Context of Requirement**

Kent County Council (the Council) has been increasingly innovative in its use of web based technology to both inform and interact with its residents, businesses and visitors to Kent. The initial service contracts for three separate initiatives (Kent TV, What's On and Webcasting) are all coming to an end enabling the Council to seek a single contractor to take these initiatives forward whilst benefiting from the bringing together of the complementary technology platforms they use.

Kent TV is transformational. The digital age is upon us and Kent TV is an essential part of the Council's service delivery, community engagement and communication in this world. It is also a key way to promote Kent as a county for tourism and inward investment. The Council has always been forward-thinking and Kent TV is an example of how we have grasped the digital agenda in a way others are now beginning to follow. We have a strong platform upon which to build and as well as providing a critical delivery and communication tool, save significant money on training and communication.

Kent TV has developed significantly from its launch in September 2007, with the third site refresh launching on 1 September this year as a result of user feedback. Undoubtedly we have learned a lot over the last two years and this will inform the future of Kent TV as whilst we have seen considerable success, there is more to be done and it is time to take this initiative even further.

It has always been the Council's vision that Kent TV is a community channel and asset. Although throughout the pilot it was exclusively funded by the Council it was never intended to be a Kent County Council channel. As we look to move forward with the service we anticipate that the service will make further links with, and be used by, schools, universities and local authorities including the NHS.

The Council is looking for this usage by the other bodies to not only be at no additional cost to the Council but also contribute to the infrastructure and running costs of the channel thus reducing the Council's financial commitment across the life of the contract.

The Council developed the "What's On" site to provide a single point where details of events across the County could be found. The site went live in November 2008 and since then has had over 16,000 events listed with over 190,000 page visits.

Wholly funded by the Council the functionality enables businesses / attractions and members of the public to load details of events which, once moderated, are searchable and viewable on the site.

The Council has been webcasting its major meetings (full Council, Cabinet etc) which have viewable on its website - [kent.gov.uk](http://kent.gov.uk) - both live and for up to six months afterwards. These webcasts have generated significant public interest and the Council is now looking, to help

meet its aspiration of enabling the people of Kent to have more involvement in democracy, to expand this service both in terms of the number of meetings covered and the available functionality.

Whilst the Council is looking for a single contractor to cover the three strands a solution with specialist sub-contractors suitably supporting a prime contractor could also be acceptable. The Council will not contract separately via this procurement.

The current value of the combined contracts is £750,000 per annum and a contract will not be awarded for more than this figure.

The contract and service for Kent TV has had a high profile throughout the pilot period. Whilst this, and all invitations to tender are issued in good faith by the Council any contract award decision will be subject to formal review by elected members through the Council's 'Key Decision' process.

## **Governance**

Kent TV will continue to be run independently by the Service Provider and comply to Ofcom regulations. The contract management relationship will be between the Service Provider and a Council Officer (currently the Director of Strategic Development and Public Access). This arrangement will exist purely to monitor contract compliance.

For editorial purposes, the Service Provider will report to an Independent Board but day to day editorial control will be in the hands of the Service Provider.

## **Existing Arrangements**

Both the Kent TV and "What's On" contracts are currently with Ten Alps plc. Tenderers should be aware that there are currently 10 members of Ten Alps' staff employed on Kent TV.

A 'TV Studio' exists at Sessions House, County Hall to be used for interviews and news reports for streaming via <http://www.KentTV.com>. Suitable for 1 on 1 interview and up to 3 people discussions (with a host and two guests). The studio has appropriate lighting for digital video/television, a degree of sound proofing and the following, Council owned, technical facilities:

- 2 Camera fixed setup (dependent on number of guests) on tripod with dolly wheels, cameras to have DV tape drives for additional backup;
- mixing for Audio and Vision (located in studio as opposed to a gallery/studio setup) with operator mixing live;
- wired/radio tie clip microphones and sound reinforcement studio microphones;
- autocue on one camera for piece to camera application (with supporting software);
- studio lighting system;
- broadcast monitor for reassurance monitoring; and
- digital video capture system for taking video material in digital form to non linear edit system (Avid Xpress pro).

Designed to be operated by one technician, allowing for minimal interaction during recording sessions.

The Council's view is that the award of a contract would be likely to involve the transfer of an undertaking under EU Directive 77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC (regarding the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses) ("The Directive") and the Transfer of Undertaking (Protection of Employment) Regulations 2006 ("The TUPE Regulations"). The term "TUPE Regulations" throughout the tender documents (unless the Contract otherwise requires) also incorporates the Directive.

However, Tenderers should take their own advice as to the applicability of the TUPE Regulations.

Tenderers should be aware that in the event of the Contract being awarded to them the Council cannot warrant that:

- a) immediately before the commencement of the Contract there will be sufficient staff assigned to the Services and in a position to transfer to the successful Tenderer's employment to enable him satisfactorily to carry out the Services without reliance on other staff or resources, or
- b) that such staff as are in post at that time will be willing to transfer employment to the successful Tenderer.

No indemnities or warranties will be given by the Council in respect of the transferring employees or liabilities arising under the TUPE Regulations.

The webcasting service is delivered by a combination of Council staff with technical support, provision of software and hosting services from Public-i Group Ltd.

Democratic Services and Local Leadership manage the Council and Public meetings for the Council, including organising the meetings, preparing the agendas, compiling the associated committee documentation and commissioning the webcasts of meetings.

Webcasts are currently supported by the Public-i D500 system comprising:

- a control unit (with DVD-RW)
- Public-i proprietary software
- 3 mobile cameras
- 14 mobile microphones
- 8 static cameras (4 in the Council Chamber and 4 in Darent Room)

The system interfaces to the dedicated recording facilities (cameras and speaker phones) in the 2 fixed locations (the Council Chamber and the Darent Room, Sessions House). The preparation, management and recording of the live meetings are undertaken by staff from the Council's Information Services Group.

The Council's Communications & Media Centre has access to the Public-i online Content Management System to book the live broadcast, maintain associated content links and run statistics reports.

The current contract provides up to 300 hours of live webcasts (e.g. during August '08 – August '09 used 195 hours). Public-i also hosts the archived webcasts, currently for 6 months from date of broadcast.

Webcasts are currently organised (on the website) by:

- this month's webcasts
- recent webcasts
- archived webcasts

Number of meetings covered	(*as at Aug '09)
• County Council Meetings	3
• Cabinet Meetings	5
• Cabinet Scrutiny Committee	4
• Health Overview and Scrutiny Committee	3
• Highways Advisory Board	2
• Schools Organisation Advisory Board	4
• Policy Overview Committee	10
• Other webcasts	6

\* n.b. as an election year, the number of meetings is lower than normal as members campaigning.

Example size, webcast (27/07/09) 1hr 52mins:

- DVD copy 1.95 gb
- Broadcast quality 155 mb
- Archive quality same as broadcast

<u>Month</u>	<u>Live webcast hours (approx)</u>
April '08	7
May '08	27
June '08	19
July '08	6.5
August '08	
September '08	33.75
October '08	8.5
November '08	14.75
December '08	12
January '09	25.75
February '09	14.75
March '09	19.75
April '09	17

The live and the archived webcasts are accessed via the Council web-site:

<http://www.kent.gov.uk/council-and-democracy/democracy-and-elections/webcasts.htm>

Democratic Services and Local Leadership have been working with the Corporate Communications team to integrate the Council's Committee Management System (Modern.gov) with the Public-i system to automate as much as possible the preparation and booking of a webcast and to improve the quality of the associated information by providing it from a central point.

## **Return Date**

Tenders must be submitted by no later than noon on:

**Tuesday 1<sup>st</sup> December 2009**

Kent County Council  
Strategic Procurement  
3.21 Sessions House  
County Hall  
Maidstone  
Kent ME14 1XQ

Tenders can be received between the hours of 0800 & 1700, Monday to Friday. Documents must not be returned to any other place.

Since delays frequently occur in the post and the Council's standing orders prevent consideration of a tender received after the appointed date and time, you are strongly advised to post the tender well in advance of the last date for receipt or arrange for delivery direct as allowance cannot be made for postal delay.

All responses are to be submitted with no reference to the sender on the packaging or accompanying delivery paperwork. The Tenderer's attention is drawn to the practice of franking postal packages whereby the sender is identified on envelopes. This practice may make the response unacceptable.

The package must have the following Tender reference number clearly displayed:

**SP0926**

## **Required Response**

Three printed copies of the response are required and tenders must remain open for acceptance for at sixty (60) days after the tender return date.

Tenderers should complete the form of tender (Section Four), provide the information requested in the Specification section and complete the attached Equality and Diversity questionnaire.

Tenderers must, using the clause numbering, respond to each point in the Requirement Section. The response must detail how you propose meeting the requirement and not just that you will. The Council requires this information to:

- ensure that you have the appropriate understanding of the requirement;
- allow it to seek evidence of where you have undertaken similar solutions;
- evaluate that the costings for your proposed solution are realistic and sustainable;
- and
- determine the impact on the Council and its resources of your proposed solution.

The Council sees at least two possible ways of taking the 'Webcasting' service forward: utilising the existing split of responsibilities between the Council and the Service Provider but with increased functionality; or requiring the full service from the Service Provider.

The decision on the appropriate approach will be determined by your responses to the tender both in terms of solution and costs. As a consequence the Requirement section for this service has had to be generic and Tenderers are asked to respond to and price both approaches.

In addition to this point by point response Tenderers must also provide details in the following areas:

### **Costs**

- a detailed budget, including:
  - proposed profit/production fee;
  - break down of estimated costs for each requirement including details of which (if any) are to be subcontracted and who the proposed sub-contractor would be; and
  - specific proposals for the 'Promoting Democracy' element. Tenderers should note the 'aspirational' element to the published quantity of 300 hours per annum. The Council hopes that Tenderers propose innovative solutions for this area that might allow pricing flexibility for variations - in both directions - to this quantity;
- their company's most recent annual accounts;
- proposals for revenue generation. NB the Council does not wish to charge viewers for access and is aware of the potential for advertising on the site.

### **Accommodation**

The Services must be provided from within Kent. Tenderers must therefore budget for suitable accommodation and for all other overheads. Tenderers are not necessarily expected to use a studio but if they wish to, they should set out plans and costings for how it would be equipped, staffed and managed.

### **Management**

- full details of their proposed management structure.

### **Technical**

- how they would guarantee the service in terms of:
  - available hours
  - times of unexpectedly high demand
  - room for growth in viewing numbers; and
  - storage of current and archived content.
- how the services would cope with:
  - further public involvement or process improvement through changing or new technology. This may include other areas of rich media technology, e.g. provision of podcasts or interaction through webcam.
  - the requirements of Government legislation, such as, the Local Democracy, Economic Development and Construction Bill.

## **Implementation Plan**

The Council requires a seamless transition to the new contracted service. Tenderers should provide a plan covering the period from contract award up to commencement of the service on 1<sup>st</sup> April 2010 detailing the following areas

- (i) necessary activities
- (ii) timescales (start and completion dates) for each activity;
- (iii) requirements on Council and/or existing Kent TV staff and/or other resource /access requirements; and
- (iv) obligations of either party in relation to each activity.

## **Terms and Conditions**

Section Three of this tender includes the proposed Terms and Conditions for the Contract. Tenderers must detail any and all concerns with this proposal in their tender response. The detail must include exactly what section(s)/wording are of concern, what the concern is and your proposed alternative wording. Just flagging areas for 'further discussion' is unacceptable.

## **Experience**

Tenderers are reminded that the OJEU Notice and the ad on the South East Business Portal advised all potential contractors that they had to be able to evidence experience in online media projects as well as an understanding of the challenges involved in running an online television channel.

Tenderers therefore must provide details of existing contracts where they are:

- delivering a broadband service with video content forming at least a part of the service;
- delivering and supporting a 24/7 information platform;
- providing high quality video content; and
- working with a wide range\* of public and private sector partners to deliver video content.

Details provided must be sufficient for the Council to view the service(s) and take up the reference with the contract owner without further contact with the Tenderer.

Tenderers must show experience of all four elements but this experience does not have to be from the same contract. \* The Council is looking for details of a contract where you are working with a minimum of five partners, at least two of whom must be from the public sector.

Please note that this section, together with your proposed costs, will be evaluated first and that tenders which do not meet this criteria and / or exceed the stated budget will be rejected at this stage and will not be progressed to the full evaluation stage.

The outline in this document is not intended to be prescriptive and Tenderers are encouraged to include any additional ideas they have for the services.

## Assessment of Tenders

All tenders received will be considered on the information contained in the tender or obtained by the Council as a direct result of the tender process. Submissions will be assessed on the basis of most economically advantageous offer which will take into account the following:

Criteria	Weighting
Proposed Solution	70
Technical Solution	20
Implementation Plan	10

The above weighting of '70' for the 'Proposed Solution' will be further allocated as follows:

- Kent TV 45
- Promoting Democracy 15
- What's On 10

The Criteria will be judged on the assessment of a combination of the written responses and presentation / demonstrations. Presentations / demonstrations will be made to an evaluation team of Officers and Members. Tenderers should note that the submission of a Tender by the due date does not guarantee an invitation to present their proposal.

## Firms Declining to Tender

There is no need to return the tender documents if you are not quoting but an e-mail to [procurement.office@kent.gov.uk](mailto:procurement.office@kent.gov.uk) prior to the closing date advising that you do not intend to respond would be appreciated.

## Tenders Not Meeting Specified Requirements

Tenderers submitting offers not complying with the specified requirement may not be considered.

## Post Tender Negotiations

Post tender negotiation on price is not the usual practice of the Council. Tenderers must make their best offer on this tender by the closing date.

## Acceptance of Tenders and Pre-Contract Negotiation

The Council does not bind itself to accept the lowest or any tender and reserves the right to accept any items in any tender to the exclusion of other items.

Any condition contained in any offer made against this invitation which may vary or replace any term or condition of contract shall not be binding unless such conditions of business or of contract are specifically accepted in writing by the Council.

a) A contract shall not be concluded between the Council and the Tenderer until the Tenderer has received a written acceptance from the Council signed by or on behalf of the



Council's Director of Finance. Acceptance of the tender shall be deemed to incorporate any modification or amendments agreed in writing in consequence of any discussions or correspondence referred to in (b) below.

b) Until the conditions set out in (a) are satisfied, any discussions/correspondence between the Council and the Tenderer shall be entirely subject to contract and conducted without any obligation whatsoever by the Council to enter into or become bound by any contract with the Tenderer.

c) Unless notified to the Tenderer in writing by the Council's Director of Finance, no Officer of the Council is authorised to change, amend or modify any of the terms or conditions herein relating to pre-contractual negotiations and/or acceptance of tender.

## **Section 2 Requirement**

### **Contract Period**

Forty eight months from 1<sup>st</sup> April 2010 to 31<sup>st</sup> March 2014.

### **Specification**

#### **Kent TV**

##### **General**

- 1.1 The Service Provider will:
  - 1.1.1 host a community broadband internet channel which should host content that covers a wide spectrum of topics and events related to Kent; and
  - 1.1.2 provide a complete hosting service for Kent TV. This includes all the hardware, software, communications links and necessary support and administration for the technical environment to operate the Site and the Channel;
  - 1.1.3 ensure the website is accessible and easy to use.;
  - 1.1.4 ensure that Kent TV is fresh and lively with content updated on a regular basis;
  - 1.1.5 ensure that Kent TV promotes both inward investment in Kent and Kent as a tourist destination; and
  - 1.1.6 Kent TV is available 24/7.

##### **Content**

- 1.2 The Service Provider will:
  - 1.2.1 ensure that approximately 40% of the budget is spent on commissioning content from local providers in the county;
  - 1.2.2 encourage the development of a sense of community in the county by ensuring that a minimum of 20% of the content will be user generated content;
  - 1.2.3 increase opportunities and encourage the public to upload their own content;
    - 1.2.3.1 as part of this the Service Provider will run video journalist training for community groups, staff and other interested parties to encourage more user generated content from the community and businesses.

- 1.2.4 provide, on average, at least 1 hour of new content per week. This will not include any webcasting, user generated or acquired content. Created content should cover a wide spectrum of topics and events related to Kent;
- 1.2.5 ensure that old content is archived and readily available to audiences through a search facility;
- 1.2.6 all content available to the public has been moderated to ensure its compliance to Ofcom guidelines and its suitability for younger viewing;
- 1.2.7 host quarterly debates/Webinars on current topics relevant to Kent, this should involve members of the public and be attended by relevant experts;
- 1.2.8 run quarterly competitions to engage and encourage local talent, for example Sound Clash and Animate & Create;
- 1.2.9 create content which informs the public in terms of citizenship, career and apprenticeship opportunities and services available to Kent residents. This should be done innovatively such as Hollywould... released in October 2009;
- 1.2.10 create content that is relevant to people of all ages and from a wide range of backgrounds and interests;
- 1.2.11 deliver content which explains 'How to'. For example 'How to get planning permission', 'How to become a Fire Officer';
- 1.2.12 provide a 'Youth area' which is a safe area for young people to interact by uploading videos, engaging in discussions and voting on topics relevant to them;
- 1.2.13 provide a Teachers area of Kent TV populated with relevant content and enabling discussion between participants;
- 1.2.14 work with children centres, schools, colleges and the local Universities to showcase material. The service should encourage schools to actively participate in the service by creating and using content available on Kent TV. For example, through the Media and Creative Diploma;
- 1.2.15 create the ability to host micro areas to highlight special campaigns or competitions;
- 1.2.16 create a password protected training area for various organisations. This would have the ability to show training videos, have quiz functionality and be interactive. As well as monitoring who has watched the videos and completed the relevant quizzes;
- 1.2.17 Kent TV also receives acquired content from third parties and also from the Council; provision must also be made to upload this content.
- 1.2.18 actively find content that can be hosted on Kent TV;
- 1.2.19 increase content sharing opportunities with other media partners in the county; and

- 1.2.20 ensure that all content produced and acquired becomes, and remains, the property of the Council.

## **Volumes**

- 1.3 The Service Provider will:
  - 1.3.1 promote Kent TV to increase visit numbers;
  - 1.3.2 deliver an average audience for Kent TV of 150,000 visits per month by 1<sup>st</sup> October 2010 and will increase this by 20% per annum thereafter; and
  - 1.3.3 Kent TV will utilise at least the top five most used social media sites to encourage greater audience numbers.

## **Revenue Generation**

- 1.4 The Service Provider will:
  - 1.4.1 foster partnerships and increase revenue streams with other Kent based authorities/businesses and institutions.

## **Technical Requirements**

- 1.5 The Service Provider will ensure that:
  - 1.5.1 the service is configured such that maintenance can be carried out without the need to close the service. In the event that the full service is not available an announcement page should appear as the front page explaining that the service is not available. It is not expected that a 404 error message, service not available, will be generated;
  - 1.5.2 the Site is secure so that it is not subject to hacking or defacement by unauthorised users, nor can it be used for the dissemination of viruses, malware or other software liable to damage Visitors' devices. User Generated Content must be screened before it is released on the Site to ensure that it does not contain viruses or other malware;
  - 1.5.3 there is sufficient capacity to store all content material generated within the Term online for immediate viewing by Visitors. This material should be managed so that it is fully recoverable in the event of hardware, software or other system failure;
  - 1.5.4 there is a full content management system that supports the categorisation, retrieval, management and automated publishing of the website contents;
  - 1.5.5 the service is capable of serving 2000 concurrent video streams at the highest quality setting. This in effect means that the system is capable of supporting 2000 concurrent users to receive streaming material. Additional users should be supported who are using the text base services in the user content pages

- 1.5.6 material is stored in the highest available quality and reformatted automatically for smaller sizes as needed by the end user device;
- 1.5.7 the video content is initially made available to Visitors based on the System's automatic detection of the Visitor's connection speed, with the facility for the Visitor to change the connection speed rate if they so choose once connected;
- 1.5.8 a RSS feed is provided to advise Visitors of the latest programmes available on the site;
- 1.5.9 Kent TV is accessible to broadband users from 1MB;
- 1.5.10 Kent TV utilises embedding facilities to embed relevant content on other sites. For example Kent.gov.uk and Wildlife Trust;
- 1.5.11 100% of the content produced and commissioned by Kent TV has subtitles (where possible BSL) and be accessible to the visually impaired;
- 1.5.12 all content is searchable by Keyword, geographical area, postcode and by type/theme;
- 1.5.13 viewers can personalise their site to include topics they are interested in;
- 1.5.14 viewers can embed content from Kent TV on to their own sites;
- 1.5.15 the Youth Channel is capable of integrating or using Shibboleth based standards, to ensure the security/identity of users from Kent Schools;
- 1.5.16 the web site and content complies with the legal obligations as stated in the Disability Discrimination Act (DDA) 1995. Therefore the software should be compliant with the internationally recognised Web Accessibility Initiative from the World Wide Web Consortium (W3C) for a double A (AA) rating;
- 1.5.17 all content is viewable through the common browsers available at the time throughout the life of the Contract; and
- 1.5.18 all content can be downloaded by viewers on to their MP3/MP4 players or mobiles.

## **Other**

- 1.6 The Service Provider will:
  - 1.6.1 actively engage with young people offering them training opportunities to help them gain valuable work experience in the industry; and
  - 1.6.2 work on a joint European funded project (interreg) with the Council and a European partner to produce content of interest on both sides of the English Channel.

## **Reporting**

1.7 The Service Provider will:

1.7.1 produce quarterly reports outlining the progress of Kent TV, including visits, page views, uploads and other relevant statistics; and

1.7.2 provide statistics on an ad-hoc basis for the Council's reporting purposes.

## **Promoting Democracy**

### **General requirements**

- 2.1 The Council is looking for an innovative service that uses broadband technology to not only record the democratic process by webcasting Council meetings but to open this process to more community engagement. This should be, at a minimum, by a combination of real-time public involvement in the meetings themselves but also, by appropriate editing, provide a concentrated focus on the important issues via Kent TV.

*The following is an extract from an internal discussion document that explores the use of Webcasting for more of the Council's meetings. Tenderers should view this as indicative of the Council's vision of opening up the democratic process to wider community engagement.*

### **Webcasting locally based Council run public meetings**

The Council runs public meetings across the 12 Districts in Kent. These 'local board' meetings are run to listen to the needs of the communities in these locations, address local concerns and improve local engagement and communication between the Council and community. In order to widen participation in the democratic process and local engagement, there is the need to webcast parts or all of these meetings and the discussions at these meetings.

Each Local Board meets 4 times a year in locations around each district. These locations can vary from basic village halls, scout huts to equipped town centre facilities. Each meeting can last 3-4 hours, in the evening mainly, and involves presentations by service providers, discussions between locally elected County Councillors and the community on local concerns and services.

In some of the Districts, the local board has evolved into Neighbourhood forums or Local Engagement forums. Rather than one Local Board covering the whole district, these are more locally run meetings that involve a wider variety of partners working with the Council. Each of these also meets 4 times a year and so there may be anything from 12-30 or more every year. The locations can vary as well between basic halls and better facilities.

Currently in total there are 92 meetings every year in Kent that is a mixture between local boards and the various types of forum. August and December are the quiet periods.

It is envisaged that webcasting these meetings is planned to be piloted in one or two locations over a period of about 3 months.

If successful it may be taken up by other Local boards/forums/local engagement forums etc in other places. However, there is no guarantee that take up would happen as each meeting is run by different county members who have different needs.

Therefore, it is estimated that there may be 1 meeting every month (of 3-4 hours in the evening) to be webcast.

## Functionality

### 2.2 The solution must:

- 2.2.1 enable broadcasting of either pre-recorded or live Council and Public meetings to the public (viewer) via the internet;
- 2.2.2 enable the viewer to access webcasts from the Kent County Council website ([www.kent.gov.uk](http://www.kent.gov.uk)) or Kent TV ([www.kenttv.com](http://www.kenttv.com));
- 2.2.3 enable the viewer, during live webcasts, to interact with the speaker/panel/moderator, such as: to make comment, raise questions or vote; to which the speaker/panel may respond;
- 2.2.4 enable the viewer to access a library of previous webcasts.;
- 2.2.5 be mobile to enable filming, recording and live webcasting of Council and Public meetings within the Council offices and any other location. These may be locations not owned/managed by the Council or 'open air';
- 2.2.6 enable live webcasting over a wireless connection as some locations do not have a wired connection;
- 2.2.7 be able to support up to two, parallel occurring or overlapping, meetings which may be in different locations;
- 2.2.8 enable the minimum number of steps to configure and use facilities such as vision mixing, captions, subtitles and remote control of cameras;
- 2.2.9 provide the webcast at optimal quality for the particular speed (e.g. from dial-up to high speed broadband) of the viewer's connection;
- 2.2.10 enable addition of Agenda Points, Speaker Points and captions to the webcast so that viewer may follow the progress of the live meeting or view an archived webcast from any of those points;
- 2.2.11 enable the webcast operator to amend or add agenda items during the live webcast;
- 2.2.12 enable the viewer to 'pause', 'rewind' and 'jump back to live' points during a live webcast (e.g. similar to 'Sky +');
- 2.2.13 enable presentation material, e.g. Powerpoint presentations, dvds or movie clips, to be shown to the viewer in parallel with viewing the meeting as it is being presented;
- 2.2.14 enable the viewer to access (view only) the Agenda and any supporting documents (e.g. in PDF format) provided for the meeting;
- 2.2.15 support the use of rich media (e.g. embedding 'tickers' such as community or council news items or downloadable content);
- 2.2.16 integrate with the Council's Committee Management System (modern.gov) to improve and automate set-up of the webcast, booking webcast time and maintain links to committee documentation and presentation material;



- 2.2.17 present Speaker profiles; integrating with the Kent County Council Committee Management System (modern.gov) – the central database for Members' information – to link to the base information;
- 2.2.18 have a video and audio output to allow interaction with video conference systems (e.g. as available in the Council Chamber and the Darent Room in Sessions House, County Hall);
- 2.2.19 enable, in the case where a live webcast is overrunning the booked time slot, existing viewers to continue to view, and new viewers to view, the live webcast;
- 2.2.20 provide output compatible with leading players (e.g. Real, Windows Media and Quicktime), browsers and operating systems; and
- 2.2.21 provide access to viewers to content for at least a year, including all the relevant documents.

### **Volumes**

- 2.3 It is anticipated that around 300 hours of live broadcasts will be prepared annually.

### **Reporting**

- 2.4 The Service Provider should provide monthly statistics on customer usage to the Council which should include, Webcasts: number of visits, number of times a meeting is viewed (live and archived), how long viewed (duration), most popular live webcast, most popular webcast viewed, most popular committee document, most popular meeting presentation.

The following sections are requirements for a service broadly similar to the current contract but may not be so relevant to the potential 'full' service contract.

### **Security/Access Levels**

- 2.5 The Solution must provide:
  - 2.5.1 secure third party access complying with the Council's IT security policy;
  - 2.5.2 different access levels to ensure security for users and data;
  - 2.5.3 an interface whereby non-technical system administrators can fully define the permissions of users;
  - 2.5.4 the facility to add/amend/delete users;
  - 2.5.5 a password setting facility;
  - 2.5.6 a 'forgotten' password facility;
  - 2.5.7 security for documents set to individuals; and

2.5.8 a defined audit trail facility.

### **User Groups**

2.6.1 The Council would expect the solution to have a formal user community group already established where there is the opportunity to discuss best practise and to suggest/view new system developments.

2.6.2 The Service Provider should ensure the Council is kept informed of ideas/developments from other areas.

### **Data Migration**

2.7.1 Archived webcasts should be migrated; including Agenda Points, Speaker Points, Captions and any links to documents or presentation material.

### **Accessibility**

2.8.1 The system should be accessible via a web browser/pda which can be accessed from any PC with no requirement for client-side software.

2.8.2 Ensure the system is accessible by staff with disabilities through compliance with the WAI guidelines to "AA" standard.

### **System Support**

2.9.1 In the event that application failure occurs, the application must be fully recoverable to the state prior to the failure.

2.9.2 The Service Provider must ensure that back ups are taken periodically – daily/weekly/monthly for hosted solution.

2.9.3 The Service Provider must provide telephone support for technical and operational assistance, Monday-Friday 8am-6pm and outside of these hours to support webcast of evening meetings.

### **Training and Documentation**

2.10 The Service Provider should:

2.10.1 provide guides relevant to administrators and all levels of user;

2.10.2 ensure Product Manuals relevant to the user are available;

2.10.3 provide site specific implementation documentation;

2.10.4 provide online help in a recognised standard format available to Council staff and members of the public using the solution;

2.10.5 provide Train the Trainer instruction (to a core team) for all access levels;

- 2.10.6 provide an administrator specific training course with separate training for IT Support as necessary;
- 2.10.7 provide the presented training course material for the Council staff to take-away and copy; and
- 2.10.8 provide on-line training and ensure training documents are available on the system and accessible to authorised Council staff.

## **What's On**

- 3.1 The Service Provider will:
  - 3.1.1 host What's On guide, detailing events and attractions open to the public;
  - 3.1.2 moderate the What's On Guide to ensure the suitability of uploaded content;
  - 3.1.3 ensure that all attractions, recognised by Visit Kent as of 1<sup>st</sup> April 2010, are listed on What's On;
  - 3.1.4 ensure at least 75% of these have video content attached by 1<sup>st</sup> October 2010. Content on attractions should be regularly reviewed and updated;
  - 3.1.5 work closely with partners, such as Visit Kent, to ensure wide coverage of Kent events;
  - 3.1.6 ensure that the public and attractions are able to upload their events to the website easily;
  - 3.1.7 promote the What's On website to increase both visit numbers and also the number of events uploaded to the site;
  - 3.1.8 ensure that out of date information is removed from the site;
  - 3.1.9 ensure that users are able to easily search for attractions and events by geographical area, electoral ward or postcode;
  - 3.1.10 ensure the content complies with the Disability Discrimination Act 1995 – at least "AA" compliant; and
  - 3.1.11 integrate Kent TV's What's On events with [www.kent.gov.uk](http://www.kent.gov.uk).

## **Volumes**

- 3.2.1 What's On should be attracting a minimum of 20,000 page views per month by October 2010, this should increase by a minimum of 20% per year thereafter; and
- 3.2.2 What's On should be populated with a minimum of 20,000 Kent events per annum.

## Section 3 Conditions of Contract

DATED:

2009

### PARTIES

- (1) Kent County Council of County Hall, Maidstone ME14 1XQ ("the Council");
- (2) ..... ("Service Provider").

### INTRODUCTION

- A. The Council is authorised under s142 of the Local Government Act 1972 and s148 of the Communications Act 2003 to use electronic communications networks in order to provide information concerning the services available within its area.
- B. The Service Provider submitted a tender on..... in response to the Council's notice inviting tenders for a proposal to provide a website and broadband television channel on the Council's behalf over the Internet and related services.
- C. The Council has agreed, after completion of its tendering process, to appoint the Service Provider to provide this website and television channel and related services on the terms and conditions set out in this Agreement.

### 1 INTERPRETATION

- 1.1 In this Agreement the following words and expressions shall, unless the context otherwise requires, have the following meanings.

**"Availability Threshold"** 99.9% of Transmission Hours;

**"Board":** the committee to be established by the Council with responsibility for editorial control of the Site and the Channel and whose functions and remit are described in the Terms of Reference forming part of the Editorial Specification;

**"Branding Guidelines":** The Council's guidelines for the use of the Council's Branding, a copy of which is attached as Appendix 1;

**"Budget":** the all-inclusive budget for the provision of the Services during the Term which comprises Appendix 2;

**"Change Control Procedure":** the procedure set out in The Schedule;

**"Channel":** the webcast broadband television service provided as part of the Site and to be known as "Kent TV" (or such other name as the Council may nominate);

**"Content":** all material of any description provided by the Service Provider, or by third parties on its behalf, for incorporation in and transmission via the Site and the Channel;

<b>“Contract Period”:</b>	the period commencing on the Start Date and expiring at midnight on 31 <sup>st</sup> March 2014;
<b>“Director of Programmes”:</b>	the person employed by the Service Provider as overall manager and editor of the Site and the Channel;
<b>“Editorial Specification”:</b>	the specification describing the editorial guidelines and content principles of the Site and the Channel and the functions and remit of the Board, a copy of which appears as Part 2 of Appendix 3;
<b>“Instalments”:</b>	the on-going costs incurred by the Service Provider for operating the Site and the Channel and acquiring the Content, which are indicated accordingly in the Budget;
<b>“Intellectual Property Rights”:</b>	all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off;
<b>“the Council’s Branding”:</b>	the logos and trade marks of the Council which are exhibited in Appendix 1;
<b>“the Council Project Director”:</b>	Director of Strategic Development and Public Access, or such other person as may from time to time be nominated by the Council;
<b>“Kent TV Marks”:</b>	the logos and the trade marks developed and/or to be developed by the Service Provider on behalf of the Council and to be utilised in the branding of the Site and the Channel;
<b>“Ofcom Broadcasting Code”:</b>	the Code issued by Ofcom from time to time which regulates the content of licensed television programme services;
<b>“Relevant Change”:</b>	as defined in Clause 14.1;
<b>“Service Credits”:</b>	the monies payable by the Service Provider to the Council in respect of any System Failure in accordance with Clause 12, being the sum of £1.80 per minute;
<b>“Services”:</b>	the services of designing, developing and operating the Site and the Channel and providing and producing the Content, together with all related services;
<b>“Services Specification”:</b>	the specification describing the Services to be provided by the Service Provider which comprises Part 1 of Appendix 3;

<b>“Site”:</b>	the website at the URL to be advised by the Council (“the URL”) to be developed and operated by the Service Provider on behalf of the Council pursuant to this Agreement for the purpose of providing the Channel;
<b>“Specifications”:</b>	together, the Editorial Specification, the Services Specification and the Technical Specification;
<b>“Start Date”:</b>	1 <sup>st</sup> April 2010;
<b>“System”:</b>	the server, other computer equipment and software used by the Service Provider to host, store, operate and make available for accessing by Visitors the Site and the Channel;
<b>“System Failure”:</b>	any breakdown, loss or failure of the System which results in the Site or the Channel being unavailable for accessing by Visitors;
<b>“Technical Specification”:</b>	the specification of the technical and operational criteria of the Site and the Channel which comprises Part 3 of Appendix 3;
<b>“Term”:</b>	the period commencing on the date of execution of this Agreement and expiring at the end of the Contract Period;
<b>“Transmission Hours”</b>	Twenty four hours a day, 365 days a year (366 days during a leap year);
<b>“Visitor”:</b>	a person who visits the Site using a computer or similar electronic service.

- 1.2 Words denoting the singular shall include the plural and vice versa, words denoting any gender shall include all genders and words denoting persons shall include firms and corporate bodies.
- 1.3 Unless the context otherwise requires, references to any Clause, Schedule or Appendix shall be deemed to be a reference to a Clause, Schedule or Appendix of this Agreement. References to this Agreement include any Schedules and Appendices.
- 1.4 Any reference to any statute, statutory provision, delegated legislation, code or guideline shall be a reference to it as the same may from time to time be amended, modified, varied or re-enacted.
- 1.5 In the event of a conflict between any of the terms contained in the main body of this Agreement and the terms contained in any of the Schedules or Appendices, the former shall prevail.
- 1.6 Any undertaking by the Service Provider to do or not to do any act or thing shall be deemed to include an undertaking to procure or not to authorise the doing of that act or thing.

## **2 APPOINTMENT**

- 2.1 The Council appoints the Service Provider and the Service Provider accepts the appointment to design, develop and operate the Site and the Channel and to provide the Content and related services during the Term in accordance with the Specifications and the terms and conditions of this Agreement.
- 2.2 The Service Provider shall ensure that at all times during the Term the Services are provided:
- 2.2.1 in a good, safe and professional manner and in a manner free from dishonesty and corruption;
  - 2.2.2 without material deviation from the best practice of a reasonable and prudent provider of websites and television channels and all associated content and with adherence to relevant standards;
  - 2.2.3 in accordance with all relevant provisions of this Agreement, the Specifications and the Budget;
  - 2.2.4 in co-operation with the Council and the Board; and
  - 2.2.5 in a manner which is not detrimental to the public image and reputation of the Council.
- 2.3 The Service Provider shall ensure that the Site and the Channel are available for accessing by Visitors for the Availability Threshold during the Contract Period and shall use all reasonable endeavours to ensure that the Site and the Channel are available for accessing by Visitors during Transmission Hours during the Contract Period.

## **3 TIMESCALE AND ACCEPTANCE**

- 3.1 The Service Provider shall operate the Site and the Channel and to provide the Content and related services on a fully operational and transmittable basis at 00:00 hours on the Start Date in accordance with an implementation plan to be approved by the Council.

## **4 EDITORIAL**

- 4.1 The Council will establish the Board. The Board will exercise ultimate editorial control over the Site and the Channel on behalf of the Council, subject to and in accordance with this Agreement. The functions and remit of the Board are set out in The Editorial Specification.
- 4.2 The Council will have ultimate operational control over all aspects of the Site and the Channel. In particular, the Service Provider shall, if required by the Council, suspend the provision of the Site and the Channel for any period specified by the Council.
- 4.3 The Council may provide or procure the provision of certain Content comprised of recordings of proceedings of Kent County Council and similar material for inclusion in the Site and the Channel which the Service Provider will duly incorporate and transmit over the Site and the Channel in accordance with the Specifications.



- 4.4 The Service Provider shall be responsible for dealing with and responding to any complaints from Visitors relating to any Content, in consultation with the Council's Project Director and in accordance with any guidance issued from time to time by the Board. Any unresolved Visitor complaints shall be referred to the Board for resolution.

## **5 INTELLECTUAL PROPERTY RIGHTS**

- 5.1 Subject to Clause 5.2, the Service Provider as beneficial owner with full title guarantee assigns to the Council all Intellectual Property Rights in:

5.1.1 the Content, including without limitation the interests of individuals as authors of the Content, all rental and lending rights, all rights of exploitation and communication to the public by any means, the rights of directors of any of the Content and all subsidiary and ancillary rights whether now or in the future created for the whole period of such rights;

5.1.2 the Site, the Channel (including the specification for the Site and the Channel, but excluding the content management system), the Kent TV Marks, the name, branding and the look and feel and all and any software for the Site and the Channel,

together with all renewals and extensions throughout the World.

- 5.2 Where and to the extent that the Content consists of material the Intellectual Property Rights to which are owned by third parties, the Service Provider shall use all reasonable endeavours to procure the grant to the Service Provider and assignment to the Council of a non-exclusive licence to include such third party Content in the Site and the Channel for the longest period reasonably obtainable.

- 5.3 The Service Provider confirms to the Council the assignment and grant by all relevant persons of all rights and consents which may be required for the publication of the Content; and the irrevocable and unconditional waiver by all relevant owners of all moral rights relating to the Content to which such persons may be entitled.

- 5.4 The Council grants to the Service Provider a non-exclusive licence for the Term to use the Council Branding for incorporation into the Site and the Channel and for the purposes of marketing and promoting the Site and the Channel. All such use of the Council Branding shall be subject to the Council's prior approval and strictly in accordance with the Branding Guidelines and such other guidelines as may be issued by the Council from time to time.

- 5.5 The Council also grants to the Service Provider on exclusive licence for the Term to use the Kent TV Marks for incorporation into the Site and the Channel and for the purposes of marketing and promoting the Site and the Channel. Any such use of the Kent TV Marks shall be in accordance with any guidelines or requirements laid down from time to time by the Council.

- 5.6 The Service Provider shall do all such further acts and execute all such further documents as the Council may from time to time reasonably require in order to vest or further confirm any of the rights expressed to be granted or assigned in this Agreement. In the event of the Service Provider failing to do so within 14 days' notice to this effect from the Council, the Council shall be entitled to execute any such documents in the Service Provider's name as its duly authorised irrevocable attorney.

## **6 BUDGETS AND PAYMENTS**

- 6.1 The Service Provider shall provide the Services in accordance with the Budget and shall bear and pay all costs and liabilities incurred in connection with the design, development and operation of the Site and the Channel and the provision of the Content in accordance with the Budget.
- 6.2 The Council shall pay the Instalments to the Service Provider in accordance with the Budget and this Agreement, subject to the due performance by the Service Provider of its obligations, but if the Council shall in its discretion elect to make any payments, it shall not be deemed to have waived any of its rights under this Agreement.
- 6.3 The Instalments shall be payable within 30 days of the Council's receipt of the Service Provider's relevant invoice.
- 6.4 All fees and charges referred to in this Agreement are exclusive of Value Added Tax which shall be payable together with the principle sum.
- 6.5 If the Council fails to pay any amount payable by it under this Agreement within 30 days from the date of receipt of relevant invoice, it shall become liable for interest on such overdue amount from the due date up to the date of actual payment whether before or after judgment at the rate of 2% per annum over the base rate of NatWest Bank plc.
- 6.6 The Service Provider shall open a special Bank Account designated as a trust account, identified with the name of the Council and shall pay into such account all sums paid by the Council pursuant to this Agreement. The Service Provider shall procure that the bank mandate for the account entitles the Council in its absolute discretion by notice to the Bank to require that all cheques drawn on such account and any other instructions relating to it shall require the counter-signature of representatives of the Council.
- 6.7 The Service Provider shall at such intervals as the Council may reasonably require give to the Council a statement of the balance of the account, together with details of expenditure to that date and expenditure required to be made until the next statement is due.
- 6.8 The Service Provider shall hold all funds in such account on trust to pay the same and to draw on such account only for the payment of expenses incurred in the acquisition of Content and the design, development and operation of the Site and the Channel in accordance with the Budget and the provisions of this Agreement.
- 6.9 At the end of each three month quarter during the Contract Period the Parties shall review the Service Provider's expenditure against the Budget. Where the Service Provider has provided the Services in accordance with the terms of this Agreement, but below Budget, then provided the Council is satisfied that the provision of the Services has not been achieved by unjustified reduction in the cost of any Budget item, or any reduction in the quality of the Site and the Channel, then the Service Provider shall be entitled to retain or be paid one half of any excess of the budgeted cost over the actual cost as certified by the Council's financial representative.

## **7 ADVERTISING**

- 7.1 The Budget includes provision for advertising, marketing and promotion of the Site and the Channel. The Service Provider shall, in consultation with the Council, and in accordance with any guidelines laid down by the Council from time to time, undertake such advertising, marketing and promotion as is reasonable and appropriate and consistent with the objectives of the Site in order to maximise the number of Visitors.
- 7.2 Unless authorised in writing by the Council on terms to be agreed, the Service Provider shall not include any advertising or sponsorship on the Site or the Channel. In addition, the Service Provider shall not, directly or indirectly, accept, solicit or encourage any payment or other consideration from any third party for the inclusion of any Content on the Site or the Channel.
- 7.3 Without prejudice to Clause 7.2, the Council may introduce third party sponsors and advertisers for the Site and the Channel. The Service Provider shall, if required by the Council, enter into a tripartite agreement with the Council and the relevant third party(s) for the provision of any such advertising and sponsorship.

## **8 MONITORING**

- 8.1 The Service Provider will promptly supply the Council with such information, progress reports and cost statements in relation to the Services as the Council may from time to time reasonably require. In particular the Service Provider shall keep true and accurate books of account relating to expenditure made in connection with the provision of the Services during the Term and for a period of three years following its expiry or termination and the Council shall be entitled by its duly authorised agents, both during and after the Term, to inspect such books of account and records at all reasonable times during business hours.
- 8.2 The Council's Project Director and the Director of Programmes shall meet regularly (and not less than once a month) to review the operation of the Site and the Channel and the conduct of the Budget and to discuss future plans, programmes and strategies for the Site and the Channel. In particular the Parties shall assess the extent to which the Site and the Channel are meeting the requirements of the Specifications. In addition, the Director of Programmes shall attend the meetings of the Board.

## **9 PERSONNEL**

- 9.1 The appointment of the Director of Programmes requires the prior written approval of the Council.
- 9.2 The Service Provider will use suitable, appropriately qualified, experienced and competent personnel in the provision of the Services and will use all reasonable endeavours to ensure continuity of personnel. The Service Provider shall indemnify the Council against any employment liabilities which it may incur arising out of or in connection with the Service Provider's staff however arising.
- 9.3 The Service Provider shall, in respect of any of its employees, contractors and agents who are involved in the provision of the Services, procure that:

- 9.3.1 each such individual is questioned as to whether he or she has any criminal convictions;
  - 9.3.2 results are obtained of a check of the most extensive available kind made with the Criminal Records Bureau in respect of each such individual; and
  - 9.3.3 the outcome of the enquiries referred to in sub-clauses 9.3.1 and 9.3.2 is notified to the Council.
- 9.4 The Service Provider shall procure that no individual who discloses or is found to have any criminal convictions shall be employed or engaged in the provision of the Services without the Council's prior written consent (not to be unreasonably withheld or delayed).

**10 Clause not used**

**11 WARRANTIES, INDEMNITY AND LIABILITY**

- 11.1 The Service Provider warrants to the Council:
- 11.1.1 to promptly pay all sums due to any person who is or may be entitled to any payment in respect of services or facilities rendered or rights granted in connection with the Site, the Channel and the Content;
  - 11.1.2 to obtain all necessary consents, grants, clearances and rights to enable it to produce and deliver the Content and to assign all rights in the same to the Council free of any claims or encumbrances;
  - 11.1.3 that in respect of any music and lyrics contained in the Content: all relevant fees have been paid; the relevant rights are controlled by the Music Collecting Societies to the extent required for the purpose of this Agreement; or they are in the public domain;
  - 11.1.4 that to the best of the Service Provider's knowledge, information and belief, no claim or litigation is pending or threatened in respect of any of the Content and the Service Provider will give full particulars to the Council immediately upon learning of any such claim or threatened claim;
  - 11.1.5 that the Content contains no material which is in contravention of the Ofcom Broadcasting Code or is defamatory or infringes any right of privacy, duty of confidence, intellectual property or any other right whatsoever of any third party or which violates any legislation or is in contempt of court;
  - 11.1.6 the Budget is a comprehensive, informed and bonafide estimate of all expenditure likely to be incurred in the course of providing the Content and the Services during the Term;
  - 11.1.7 the Service Provider shall be responsible for establishing appropriate industrial relations and health and safety arrangements for personnel engaged by it in any capacity in connection with the Services and in producing the Content the Service Provider will comply with all applicable laws, regulations and codes of practice;

- 11.1.8 the Service Provider does not and will not unlawfully discriminate on the grounds of sex, age, sexual orientation, marital status, race or disability in the provision of the Services and shall procure that the Site and the Channel comply with all such legislation and requirements;
- 11.1.9 that the sources of supply of the Content will meet the requirements agreed from time to time with the Council for local content production.
- 11.2 The Service Provider agrees to indemnify and hold harmless the Council and its officers, directors, agents and employees against all and any claims, damages, liabilities, losses and expenses, including reasonable lawyers' fees arising out of any breach by the Service Provider (whether actual, alleged, apparent or potential) of any term of this Agreement or arising from the negligent or wrongful act or omission of the Service Provider, its employees, agents or contractors.
- 11.3 The Service Provider shall:
- 11.3.1 promptly notify the Council of any proceedings instituted, claims or complaints made in respect of any of the Content;
- 11.3.2 provide all such assistance and co-operation as the Council may require in respect of any proceedings instituted, claims or complaints made in respect of the Content;
- 11.3.3 disclose and supply to the Council in good faith all facts, circumstances, information, documents and material which might reasonably be considered relevant or which the Council may reasonably request to enable the Council to satisfy itself that the Service Provider is not in breach of any of its representations, undertakings and warranties set out in this Clause 11.
- 11.4 The Service Provider's aggregate liability to the Council arising by reason of or in connection with this Agreement, whether arising in or for breach of contract, tort (including negligence), breach of Statutory duty, indemnity or otherwise, shall be limited to £5,000,000.
- 11.5 The Council's aggregate liability to the Service Provider arising by reason of or in connection with this Agreement, whether arising in or for breach of contract, tort (including negligence), breach of Statutory duty, indemnity or otherwise, shall be limited to the sum of £1,000,000.
- 11.6 Nothing in this Clause 11 or otherwise in this Agreement shall exclude or in any way limit either party's liability for: (i) fraud, (ii) death or personal injury caused by its negligence (including negligence as defined in s1 Unfair Contract Terms Act 1977), (iii) breach of terms regarding title implied by s12 Sale of Goods Act 1979 and/or s2 Supply of Goods and Services Act 1982, or (iv) any liability to the extent the same may not be excluded or limited as a matter of law.

## **12 SERVICE CREDITS**

- 12.1 In the event of any System Failure occurring during the Contract Period, then without prejudice to the Council's other remedies, the Service Provider shall be liable to pay the Council Service Credits in accordance with Clauses 12.2 and 12.3.

- 12.2 At the end of each 3 month period during the Contract Period, the Parties shall exchange any relevant information and agree in good faith the aggregate duration of any System Failures occurring during such 3 month period and the amount of any Service Credits payable to the Council, calculated at the rate of £1.80 for each minute of System Failure. The Service Provider shall, within 14 days of such determination remit any Service Credits due to the Council.
- 12.3 The Service Provider shall have no liability to pay Service Credits where or to the extent that any System Failure:-
- 12.3.1 is attributable to maintenance, the nature and duration of which has been agreed in advance by the Council;
  - 12.3.2 is caused by a Force Majeure Event (as defined in Clause 17.1);
  - 12.3.3 occurs between the hours of 24.00 and 05.00; or
  - 12.3.4 does not prevent the Availability Threshold from being reached.

### **13 INSURANCE**

- 13.1 Unless otherwise required by the Council, the Service Provider shall effect and maintain with a reputable insurer to be approved by the Council (such approval not to be unreasonably withheld or delayed), the following insurances on terms commensurate with standard production and webcasting practice:
- 13.1.1 production insurance incorporating cover for public liability and employer's liability;
  - 13.1.2 media liability insurance and such other insurances as may be prudent in the circumstances of the production of the Content or as may reasonably be required by the Council or by law.
- 13.2 The media liability policy shall cover claims made during the period of 5 years from the first transmission of the Content and shall be in an amount of £5,000,000 in aggregate, £1,000,000 per claim and with a deductible of no more than £10,000 per claim. The Service Provider shall ensure that all such policies are written in the name of the Service Provider with the Council named as an additional insured party for its rights and interests.
- 13.3 The Service Provider will promptly furnish the Council on request with proof of such insurances. If the Service Provider fails to furnish such proof on demand the Council may on 14 days' notice to the Service Provider secure such insurance on behalf of the Service Provider and charge any premium payments to the Service Provider or set these off against any sums that may be due to the Service Provider under this Agreement.
- 13.4 The Service Provider shall ensure that all premiums and renewals are paid when due.

## **14 CHANGE CONTROL**

14.1 Save as provided in the next sentence, the Parties shall consult with each other about any changes to the Services or the Specifications. If the either Party wishes to make any changes to the Services or the Specifications which has any of the following consequences (“a Relevant Change”), the Parties shall follow the Change Control Procedure set out in the Schedule:

14.1.1 an increase in the overall Budget;

14.1.2 a reallocation of any Budget item(s) resulting in a reduction of more than 10% of the aggregate allocation in the Budget for programming items; or

14.1.3 a significant impact on the quality of the Services or the Specifications.

## **15 TERM AND TERMINATION**

15.1 Unless terminated earlier in accordance with its terms, this Agreement will commence on the date of execution and will expire at the end of the Contract Period save that the Council, without default on the part of the Service Provider, may terminate this Agreement at any time after giving six month’s notice in writing to the Service Provider.

15.2 A Party (the “Initiating Party”) may terminate this Agreement with immediate effect by notice to the other Party (the “Breaching Party”) on or at any time after the occurrence of any of the following events in relation to the Breaching Party:-

15.2.1 the Breaching Party being in material or persistent breach of any provision of this Agreement and, if the breach is capable of remedy, failing to remedy the breach within 14 days (or such longer period as the Initiating Party may stipulate) after receipt of written notice from the Initiating Party giving details of the breach. For the purposes of this Clause 15.2.1 a breach is capable of remedy if time is not of the essence for performance of the obligation and if the Breaching Party can comply with the obligation within the 14 day period;

15.2.2 the Breaching Party passing a resolution for its winding up or a court of competent jurisdiction making an order for the Breaching Party’s winding up or dissolution; the making of an administration order in relation to the Breaching Party or the appointment of a receiver over, or an encumbrancer taking possession of or selling, a substantial asset of the Breaching Party; the Breaching Party making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally. The provisions of this Clause 15.2.2 shall not apply to a bona fide amalgamation or restructuring or reorganisation or where such event does not prevent the Breaching Party from carrying out its obligations under this Agreement.

15.3 Without prejudice to Clauses 15.1 & 15.2, the Council may also terminate this Agreement with immediate effect:

15.3.1 if in any quarter the Availability Threshold falls below 90%; and

15.3.2 as provided in Clause 17.2.

## **16 CONSEQUENCES OF TERMINATION**

- 16.1 Prior to termination or expiry of this Agreement the Service Provider shall make the necessary arrangements to secure a handover of the Site, the Channel and all Content to the Council or to any third party supplier nominated by it. The Service Provider shall provide all reasonable assistance to the Council and any such third party to ensure a smooth handover and to enable them to continue the operation of the Site and the Channel without any loss of continuity. The Service Provider shall deliver up all data, documents, materials and properties required for the continuation of the Site and the Channel.
- 16.2 The Service Provider shall ensure that all separate web pages, video, text and data comprised in the Site are delivered up to the Council in a form in which they can be inputted without difficulty by any replacement service provider onto its own content management system.

## **17 FORCE MAJEURE**

- 17.1 The Service Provider shall not be liable for its failure to perform its obligations for any period to the extent only that such performance is prevented or directly adversely affected to a material degree by any of the following events: any Act of God, national or local emergency, fire, flood, severe inclement weather, national epidemic or power failure (each a "Force Majeure Event"), all to the extent that these events are beyond the Service Provider's reasonable control.
- 17.2 The period of excused non-performance shall be limited to the duration of such events provided that where any such suspension lasts for a period of more than 20 days and the Service Provider has failed, during such period, to fully restore the System to meet the requirements of this Agreement, the Council shall be entitled to terminate this Agreement forthwith upon written notice to the Service Provider.
- 17.3 The Service Provider shall give prompt notice to the Council of any claim that the performance of its obligations is prevented or adversely affected by any Force Majeure Event and shall use all reasonable endeavours to recommence performance as soon as practicable.

## **18 TUPE**

- 18.1 The Parties acknowledge that on termination or expiry of this Agreement TUPE may apply and to the extent that TUPE does apply there may be a transfer of the Service Provider's staff involved in the provision of the Services to the Council or to any third party supplier appointed by the Council to operate the Site and the Channel from such date.
- 18.2 Within 14 days of delivery by either party of a termination notice issued under Clause 15 or in any event no later than 3 months before the expiry of the Term, the Service Provider shall, subject to any applicable data protection legislation, provide to the Council (or if directed by the Council to any third party supplier) a list of the Service Provider's employees who are or will be primarily engaged in the performance of the Services at the date of termination or expiry. The list shall include details of the terms of employment of all such staff and such other information as may be reasonably required by the Council to permit compliance with TUPE by the Council and any third party supplier. The Service Provider shall warrant to the Council that the relevant



information is complete and accurate in all material respects as at the date of disclosure. The Service Provider shall use all reasonable endeavours to obtain such consents as are necessary from the relevant employees to enable the Service Provider to supply the list and any other information required by this Clause 18.2.

- 18.3 After the relevant information has been provided, the Service Provider shall, subject to any applicable data protection legislation, within 14 days of a change or receipt of any request inform the Council of any material change in any part of the relevant information.
- 18.4 The Service Provider shall not during the 3 month period prior to expiry or during any period of notice of termination, without the prior written consent of the Council:-
- 18.4.1 make or promise to make any changes to the terms and conditions of employment of any of the relevant employees, unless such change is required by law;
- 18.4.2 make or promise to make any changes to the costs of employing any of the relevant employees which has the effect of increasing by 5% or more the total cost of employing them; or
- 18.4.3 increase the relevant number of relevant employees, nor dismiss or transfer to duties unconnected with the Services any relevant employee.
- 18.5 The Service Provider shall ensure that all salaries, wages and other remuneration for which it is liable as employer of the relevant employees shall be paid up to the termination date.
- 18.6 On termination of expiry of this Agreement, the Service Provider shall indemnify and keep indemnified the Council against all employment liabilities arising from any claims, demands or proceedings brought against the Council by any of the relevant employees or any other employee of the Service Provider directly or indirectly in connection with:
- 18.6.1 the termination of employment of any such employees by the Service Provider up to the termination date;
- 18.6.2 any act or omission of the Service Provider up to and including the termination date;
- 18.6.3 any claim that the Service Provider has breached its obligations under TUPE;
- 18.6.4 the termination of employment of any such employees by the Service Provider at any time after the Termination Date.

## **19 CONFIDENTIALITY**

- 19.1 The Parties shall:
- 19.1.1 preserve the confidentiality of all confidential information of the other which it receives (“Confidential Information”);

- 19.1.2 keep such information secure and protected against theft, damage, loss or unauthorised access;
  - 19.1.3 not use or disclose such information for any purpose except as contemplated by this Agreement; and
  - 19.1.4 ensure that these obligations are observed by its employees, officers, agents and contractors.
- 19.2 The confidentiality obligations imposed by this Clause 19 shall survive the termination or expiry of this Agreement, but shall not apply to information which: is already in or subsequently comes into the public domain through no fault of the recipient, its employees, officers, agents or contractors; is lawfully received by the recipient from a third party on an unrestricted basis; or is legally required to be disclosed by a competent authority.

## **20 FREEDOM OF INFORMATION**

- 20.1 The Service Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 ("the Act") and shall assist and co-operate with the Council (at the Service Provider's expense) to enable the Council to comply with these information disclosure requirements.
- 20.2 The Service Provider shall:
- 20.2.1 transfer any request for information which it receives to the Council as soon as practicable after receipt and in any event within two business days of receiving such request;
  - 20.2.2 provide the Council with a copy of all information in its possession or power in the form that the Council requires in order to respond to the request within five business days of receiving such request; and
  - 20.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in section 10 of the Act.
- 20.3 The Council shall be responsible for determining in its absolute discretion whether any commercially sensitive information:
- 20.3.1 is exempt from disclosure in accordance with the provisions of the Act;
  - 20.3.2 is to be disclosed in response to a request.
- In no event shall the Service Provider respond directly to a request for such information unless expressly authorised to do so by the Council.
- 20.4 The Service Provider acknowledges that the Council may, acting in accordance with the Department for Constitutional Affairs Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Act, be obliged to disclose information:
- 20.4.1 without consulting with the Service Provider; or

20.4.2 following consultation with the Service Provider and having taken its views into account.

20.5 The Service Provider shall ensure that all information produced in the course of this Agreement or relating to this Agreement is retained for disclosure pursuant to this Clause 20 and shall permit the Council to inspect such records as requested from time to time.

20.6 The Service Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with this Clause 20.

## **21 COMPETITION**

21.1 The Service Provider shall not use or re-create the style, design, colours or branding of the Site or the Channel, other than in the provision of the Services.

21.2 The Service Provider shall not without the Council's prior written consent during the Term nor for a period of 12 months following its expiry or termination for any reason be engaged directly or indirectly in any capacity in the provision of services similar to the Services on its behalf or to any other party involved in the electronic publication of information relating to events, services and amenities available in the County of Kent. This shall not prevent the Service Provider from providing services to any electronic publisher whose target audience or subscribers includes the whole of England or the UK and not specifically the County of Kent.

## **22 CREDITS**

22.1 The Service Provider shall be entitled to a credit appearing on the home page of the Site of a form and size to be agreed with the Council.

## **23 DATA PROTECTION**

23.1 The Council and the Service Provider acknowledge that for the purposes of the Data Protection Act 1998 ("DPA"), the Council is the data controller and the Service Provider is the data processor of any personal data relating to any Visitor ("Personal Data").

23.2 The Service Provider shall process the Personal Data only to the extent, and in such a manner, as is necessary for the purposes of this Agreement and in accordance with the principles of DPA and the Council's instructions from time to time and shall not process the Personal Data for any other purpose.

23.3 The Service Provider shall promptly comply with any request from the Council requiring the Service Provider to amend, transfer or delete the Personal Data.

23.4 If the Service Provider receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Act 1998 and the data protection principles set out in that Act, it shall immediately notify the Council and it shall provide the Council with full co-operation and assistance in relation to any such matter.

- 23.5 At the Council's request, the Service Provider shall provide to the Council a copy of all Personal Data held by it in the format and on the media reasonably specified by the Council.
- 23.6 The Service Provider shall not transfer the Personal Data outside the European Economic Area without the prior written consent of the Council. The Service Provider may not authorise any third party or sub-contractor to process any Personal Data.

## **24 MISCELLANEOUS**

### **24.1 Assignment and Sub-Contracting**

- 24.1.1 the Service Provider may not assign any of its obligations under this Agreement. The Service Provider may sub-contract part of its obligations under this Agreement subject to the prior consent of the Council which the Council at its absolute discretion may withhold; and
- 24.1.2 the Service Provider shall ensure that all contracts which it enters into for the provision of Content and otherwise relating to the Services are consistent with the provisions of this Agreement and the objectives of the Specifications and in particular vest in the Service Provider all the Intellectual Property Rights and other rights referred to in Clause 5.

### **24.2 Dispute Resolution**

If a dispute arises in relation to any provision of this Agreement, then the Parties shall be entitled jointly to refer the matter for determination by an independent expert nominated by agreement between the Council and the Service Provider or, failing agreement within 15 business days of the first nomination proposal, by the President for the time being of the Royal Television Society in England and Wales. Such expert shall be instructed to determine (acting as an expert and not as an arbitrator) any such dispute and such determination shall be final and binding upon the Parties failing any manifest error on the face of the decision or bad faith. Each party shall co-operate in providing to the expert such information as the expert reasonably requests to assist in his deliberations. Either party may submit material to the expert on the basis that it will remain confidential and not be disclosed to any other person. The costs of the expert shall be shared equally by the Parties.

### **24.3 General**

This Agreement and any document referred to in this Agreement constitute the entire agreement, and supersedes any previous agreement between the Parties relating to the subject matter of this Agreement.

### **24.4 Waiver**

The failure to exercise or the delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy.

24.5 Effect

24.5.1 The rights and remedies contained in this Agreement are cumulative and not exclusive of rights or remedies provided by law, save to the extent that any rights or remedies provided by law are expressly excluded in this Agreement.

24.5.2 No provision of this Agreement creates a partnership or joint venture between the Parties. Save as expressly provided, a party has no authority or power to bind, to contract in the name of, or to create a liability for the other party in any way or for any purpose.

24.5.3 The invalidity, illegality or unenforceability of a provision of this Agreement does not affect or impair the continuation in force of the remainder of this Agreement.

24.6 Notices

Any notices required to be given under this Agreement shall be in writing and shall be deemed to have been duly served if hand delivered or sent by fax (followed by mailing of a hard copy of such notice) or by first class post correctly addressed to the other Party's address as specified in this Agreement or at such other address as a Party may designate from time to time in accordance with this Clause and any notice so given shall be deemed to have been served:-

24.6.1 if hand delivered, at the time of delivery;

24.6.2 if sent by fax, at the end of transmission (provided that a positive transmission result report back on such fax is received);

24.6.3 if sent by prepaid post, within 48 hours of posting (exclusive of the hours of Sunday).

For the avoidance of doubt, notices may not be given by email and any purported notice so given shall have no legal effect.

24.7 Third Parties

The Parties do not intend that any term of this Agreement shall be enforceable by any person who is not a party to this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of a third party which exists or is available otherwise than from such Act.

Signed on behalf of the Parties on the above date.

Signed by  
Duly authorised for and  
on behalf of Kent County Council

.....

.....  
(Print name)

Signed by

Duly authorised for and  
on behalf of .....

.....

.....

(Print name)

## SCHEDULE

### CHANGE CONTROL PROCEDURE

#### **1 PRINCIPLES**

- 1.1 Any Relevant Change contemplated in Clause 14.1 shall be dealt with in accordance with the Change Control Procedure set out in paragraph 2.
- 1.2 Until such time as the Relevant Change is approved in accordance with the Change Control Procedure, the Service Provider shall, unless otherwise agreed in writing, continue to supply the Services in accordance with the Budget and the Specifications as if the request or recommendation had not been made.
- 1.3 Any discussions which may take place between the Council and the Service Provider in connection with a request or recommendation before the authorisation of a Relevant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Service Provider or its sub-contractors, which has not been authorised in advance by the Council shall be undertaken entirely at the expense and liability of the Service Provider.

#### **2 CHANGE CONTROL PROCEDURE**

- 2.1 Discussion between the Council and the Service Provider concerning a Relevant Change shall result in any one of the following:

2.1.1 no further action being taken; or

2.1.2 a written request by either Party to make a Relevant Change.

All change control note(s) ("**CCN**") shall only be valid if submitted via the Council Project Director and the Service Provider's Director of Programmes. Further, all CCNs shall be in the form attached to this Schedule.

- 2.2 A written request by either Party to make a Relevant Change shall be submitted direct to the other Party in the form of 2 copies of a CCN duly signed.

- 2.3 Each CCN shall contain:

2.3.1 the title of the Relevant Change;

2.3.2 the date of the request for the Relevant Change;

2.3.3 the reason for the Relevant Change;

2.3.4 full details of the Relevant Change including any specifications;

2.3.5 the budgetary implications, if any, of the Relevant Change;

2.3.6 a timetable for implementation together with any proposals for acceptance of the Relevant Change;

- 2.3.7 details of the likely impact, if any, of the Relevant Change on the Services and the Specifications.
- 2.3.8 provision for signature by the Service Provider and by the Council.
- 2.4 For each CCN submitted, the Party receiving the CCN shall, within 14 days or as soon as reasonably practicable following receipt of the CCN:
  - 2.4.1 allocate a sequential number to the CCN;
  - 2.4.2 evaluate the CCN and as appropriate request further information;
  - 2.4.3 either: (i) approve the CNN and arrange for 2 copies of the CNN to be signed on its behalf and return 1 of the copies to the Party requesting the Relevant Change; or (ii) return the CCN to the Party requesting the Relevant Change duly rejected.



**Change Control Notice (“CCN”)**

The purpose of this CCN is to document an agreed modification to the Services or the Specifications.

Change Title:			
Description of Change:			
Reference:			
Further Documentation Appended:			
Reason for Change:			
Reply by Date:			
<b>Change Evaluation Authorisation</b>		<b>Budgetary Impact</b>	<b>£</b>
<b>Position</b>	<b>Name</b>	<b>Signature</b>	<b>Date</b>
Originator:			
the Council Service Representative:			
Service Provider Representative:			
Change Rejected:			

## APPENDIX 1

### THE COUNCIL'S BRANDING GUIDELINES

#### **Kent County Council Logo Guidelines**



The KCC logo **must** appear on:

- all materials sent outside of KCC
- all publications which KCC has sponsored or supplied funding for
- publications about projects KCC has sponsored or been involved with.

#### **The logo consists of:**

- the background block of red or black
- the horse
- the words Kent County Council
- the rule.

The logo should not be recreated from scratch, distorted, stretched, dismantled, added to or in any other way tampered with.

The horse, words and rule are always reversed-out of the block (white on black or red) - under no circumstances are they to be printed in any colour other than white.

The logo stands alone, without directorate or department names. There should be no encroachment from text or other images. This means an exclusion zone should be maintained around the logo of 10mm on brochure covers, and 5mm on newsletters. Specifications will be developed separately for corporate stationery (letterheads, compliment slips etc). If in doubt, contact Communication and Media Centre.

#### **Proportions**

The minimum height of the logo is 20mm.

Minimum sizes for the KCC logo in different sized publications are:

Page size		Logo height
A6	A5	20mm
	$\frac{1}{3}$ A4	25mm
	A4	35mm
	A3	45mm
	A2	

### The block and use of colour

The block out of which the logo is reversed, should be red (Pantone 185) or, if printing in one colour a black block may be used instead.

In partnership publications only, where colour choices exclude Pantone 185, and where black would be inappropriate (e.g. where a column of sponsors' logos are *all* reversed out of blue), it is acceptable for the KCC logo to be reversed out of any dark colour (as long as it is clearly visible, and no other image or text encroaches).

### Corporate stationery

Layouts for letterheads, compliment slips and business cards have been agreed. Contact County Print for general information and to organise printing. Letterheads are generally printed without unit names and addresses.

For guidance on templates, contact your Directorate Representative (see below).

### Directorate Contacts

Please check with your Directorate Communications representative about how to use the logo and for other communication advice:

Corporate Services	?
Children, Families and Education	Jill Johnson
Kent Adult Social Service	Phil Porter
Environment and Regeneration	Alison St Clair Baker

### Leaflets, brochures and general branding queries

Toolkits are currently being prepared to help and support staff on all marketing activity. In the meantime, please contact KCC Branding and Publication Manager, Shelley Whittaker for further information.

**APPENDIX 2**  
**THE BUDGET**

**APPENDIX 3**  
**THE SPECIFICATIONS**

## Section 4 Tender Documents

### Invoice Payment

The Council encourages its Contractors to receive payment through the Bank Automated Clearing System (BACS) as this facilitates payment and cuts costs for both parties.

If you accept payment by this method, please supply your bank details below.

Name of Bank \_\_\_\_\_

Sort Code            \_\_\_ - \_\_\_ - \_\_\_            Account Number    \_\_\_\_\_

VAT Registration Number    \_\_\_\_\_

If you are currently unable to accept BACS payments, please specify the date by which you intend to be able to:

\_\_\_\_\_

Settlement discount for payment within \_\_\_\_\_ days of receipt of invoice \_\_\_\_\_%

## TENDER FOR COMMUNITY TV

To the Kent County Council

\_\_\_\_\_ the undersigned, hereby offer and undertake to supply and deliver and/or carry out work upon the order of the Council and other specified Local Authorities & Public Bodies in accordance with the annexed schedule and Conditions of Contract, and now to be taken as part of the tender, the goods and/or work described and specified in the tender documents in such quantities in such manner and at such times as may be required, at the prices or discounts related to the work or item or items therein, during the period as stated.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signature \_\_\_\_\_

Name of person signing \_\_\_\_\_

Position of person signing \_\_\_\_\_

Full name of tendering firm \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

e-Mail address \_\_\_\_\_

Telephone Number \_\_\_\_\_

\_\_\_\_\_

*For Kent County Council Use Only Below this Line*