

DATED [] 1 2012

(1) SECRETARY OF STATE FOR EDUCATION

and

(2) LEON RESTAURANTS LTD

CONTRACT FOR THE PROVISION OF CONSULTANCY SERVICES

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THIS CONTRACT IS DATED to be added by hand 2012

PARTIES:

- (1) **THE SECRETARY OF STATE FOR EDUCATION** whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the "Department"); and
- (2) **LEON Restaurants Ltd** a company registered in England and Wales under company number 05018441 and having its registered office at 4th Floor, St Margaret's House 18-20 Southwark Street, London, SE1 1TJ (the "Consultant").

RECITALS:

- (A) The Consultant is in business as a company running several restaurants in the UK.
- (B) The Department, in view of the Consultant's relevant skills, experience and knowledge wishes to engage the Consultant to provide certain Consultancy Services to the Department.
- (C) The Consultant has agreed to provide such Consultancy Services to the Department on and subject to the terms and conditions set out in this Contract.
- (D) The Department's reference number for this Contract is SFP0012012.

1. INTERPRETATION

1.1 In this Contract the following words shall mean:-

"Background IPR"

means any Intellectual Property Rights owned by either party prior to the commencement of this Contract; or which have been created independently by either party or a third party outside the scope of this Contract but which are nevertheless used in the performance of the Consultancy Services;

"Brand"

means the names "School Food Review", "School Food Action Plan", "School Food Plan" and all derivative or associated names and corresponding logos, owned by the Department at or prior to the commencement of this Contract;

"Charges"

means the charges payable by the Department in consideration of the Consultancy Services as set out in Schedule 2

"Confidential Information"	means all information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including but not limited to information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party and commercially sensitive information which may be regarded as the confidential information of the disclosing party;
"Co-funder"	means a third party from whom the Consultant successfully secures additional funding in pursuance of its obligations to deliver the Consultancy Services under this Contract, as described in Schedule 1;
"Consultancy Services"	means all of the activities to be undertaken by or to be performed by the Consultant and all Deliverables as described in Schedule 1 as may be amended from time to time;
"Consultant Personnel"	all employees, agents, consultants and contractors of the Consultant and/or of any Sub-contractor;
"Consultant's Contract Manager"	Means MATT JONES, LEON, 4th Floor, St Margaret's House, 18-20 Southwark Street, London SE1 1TJ or such other person as the Consultant may notify to the Department in writing from time to time;
"Contract Manager"	means [REDACTED] ESD/FRU, DEPARTMENT FOR EDUCATION (2 nd Floor), SANCTUARY BUILDINGS, GREAT SMITH STREET, LONDON SW1 3BT, or such other person as the Department may notify to the Consultant in writing from time to time;
"Crown"	means Queen Elizabeth II and any successor;
"Deliverables"	means the deliverables which form part of the Consultancy Services more particularly set out and described in Schedule 1;
"Department's Confidential Information"	all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Department, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations;

"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Intellectual Property Rights" ("IPR")	means any copyright, rights in designs, database rights, domain names, trade marks and brand names, service marks, patents or any applications for any of the foregoing, know-how or similar rights or obligations (whether registrable or not) including Moral Rights as defined in Chapter IV of the Copyright, Designs and Patents Act 1988;
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 1998;
"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 References to "Contract" mean this contract (and include the Schedules). References to "Clauses" and "Schedules" mean clauses of and schedules to this Contract. The provisions of the Schedules shall be binding on the parties as if set out in full in this Contract.

1.3 References in this Contract to statutory provisions include all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.

1.4 Reference to the singular include the plural and vice versa and references to any gender include both genders. References to a person include any individual, firm, unincorporated association or body corporate.

2. COMMENCEMENT AND CONTINUATION

2.1 The Consultant shall commence the Consultancy Services on 4th July 2012 and, subject to the rights of earlier termination set out in this Contract, shall complete the Consultancy Services on or before April 2013.

2.2 This Contract shall be deemed to have been effective from 4th July 2012.

2.3 The Consultant shall provide the Consultancy Services at such times and at such locations as the Department and the Consultant shall agree from time to time or failing agreement as the Department shall reasonably specify.

3. PROVISION OF CONSULTANCY SERVICES

- 3.1 The Consultant is appointed to undertake the Consultancy Services. This Contract shall not prevent the Consultant from undertaking other consultancy or project management services provided that the undertaking of such services does not cause a breach of any provision of this Contract.
- 3.2 The Consultant shall promptly and efficiently perform the Consultancy Services as and when required with all due care and skill as may be expected of a person or an organisation with the experience of the Consultant and in accordance with this Contract and in particular but not limited to the provisions set out in Schedule 1.
- 3.3 The Consultant shall comply with the accounting and information provisions of Schedule 2.
- 3.4 The Consultant shall keep detailed and accurate records of all activities undertaken in relation to the provision of the Consultancy Services and shall provide the Department with reports at such intervals and in such form as the Contract Manager may from time to time require.
- 3.5 The Consultant acknowledges the importance attached by the Department to equal opportunities. The Consultant shall ensure that in fulfilling its obligations under this Contract it and its officers, employees and agents will act fairly, avoid discrimination and promote equal opportunities.
- 3.6 The Consultant warrants that in performing its duties under this Contract it will not, and its officers and/or employees will not, infringe the rights of, nor breach any of its or their obligations to any third party.

4. CHARGES AND TERMS OF PAYMENT

In consideration of and subject to the satisfactory performance by the Consultant of the Consultancy Services, the Department shall pay the Consultant the Charges in accordance with the payment provisions of Schedule 2 provided that the Department has received full and accurate information and documentation as required by Schedule 2 to be submitted by the Consultant for work completed to the satisfaction of the Department.

5. CHANGES TO THE DEPARTMENT'S REQUIREMENTS

- 5.1 The Department shall notify the Consultant of any material change to the Department's requirements under this Contract.
- 5.2 The Consultant shall use all reasonable endeavours to accommodate any changes to the needs and requirements of the Department provided that it shall be entitled to payment for any additional costs incurred as a result of any such changes. The amount of such additional costs to be agreed between the parties in writing.
- 5.3 If the parties are unable to agree such additional costs, the provisions of Clause 26 shall apply

6. CONTRACT MANAGEMENT

- 6.1 The Consultant shall and shall ensure that its officers, employees and agents shall comply with any reasonable guidance or guidelines issued by the Contract Manager from time to time in connection with the Consultancy Services.

6.2 The Consultant shall address any enquiries about procedural, contractual or other matters in connection with the provision of the Consultancy Services in writing to the Contract Manager. Any correspondence relating to this Contract shall quote the reference number set out in Recital D to this Contract.

6.3 The Department reserves the right to call contract meetings. These shall be attended by the Consultant, the Contract Manager and any other person the Department wishes to attend.

7. PREMISES AND EQUIPMENT

7.1 Unless otherwise agreed, any land or premises made available to the Consultant by the Department in connection with the provision of the Consultancy Services shall be made available to the Consultant free of charge and without exclusive possession and shall be used by the Consultant solely for the purpose of providing the Consultancy Services. The Consultant shall have the use of such land or premises as licensee and shall immediately vacate the same on the expiry or other termination of this Contract.

7.2 The Consultant shall ensure that in providing the Consultancy Services it will and its officers, employees, agents and sub-contractors will co-operate as far as may be reasonably necessary with the Department's employees. The Consultant shall further ensure that it and its sub-contractors carry out their duties in such a way as to cause no unreasonable or unnecessary disruption to the routine and procedures of the Department, its employees, visitors or other consultants.

7.3 The Consultant shall ensure that it and its officers, employees, agents and sub-contractors will comply with all rules and regulations from time to time issued by the Department relating to the use and/or security of the Department's premises.

7.4 For the purposes of this Contract, the following areas and facilities at the Department's premises will be provided free for use by the Consultant and its officers, employees, agents and sub-contractors:-

7.4.1 toilets;

7.4.2 cooking facilities;

7.4.3 heating;

7.4.4 lighting;

7.4.5 first aid; and

7.4.6 reasonable telephone use (use to be restricted to internal calls or to the Consultant's premises or to the emergency services – private or non-Consultancy Services work related calls are not permitted).

7.5 The Department shall be under no obligation to provide any premises or equipment to the Consultant other than those expressly referred to in this Contract.

7.6 The Consultant shall provide its own equipment where necessary for the delivery of the Consultancy Services but for reasons of security and interoperability, only IT equipment owned by the Department may be used to access the Department's network.

7.7 Where the Department in its sole discretion deems it necessary to provide the Consultant with laptop computers for the purposes of this Contract, any such computers shall at all

times remain the property of the Department.

- 7.8 The Consultant shall ensure the security of the laptop computer whilst in its possession, during the supply of the Services, in accordance with the Department's reasonable security requirements as required from time to time.
- 7.9 The Consultant shall be responsible for ensuring that its officers, employees, agents and sub-contractors make proper use and take reasonable care of the Department's facilities and equipment provided pursuant to this Clause 7.

8. INTELLECTUAL PROPERTY RIGHTS AND USE OF BRAND

- 8.1 All Background IPR owned by the Department, ("Department Background IPR") shall remain the property of the Department. For the avoidance of doubt the Department Background IPR include all rights in the Brand and in any source materials supplied by the Department to the Consultant. The Department hereby grants a non-exclusive royalty-free, revocable licence to the Consultant to use and reproduce any Department Background IPR and the Brand insofar as is necessary for the performance by the Consultant of its obligations under the Contract and for the duration of this Contract and for no other purposes, with the right to sub-license only with the prior written consent of the Department. The Consultant shall not otherwise disseminate to any third party any materials containing any Department Background IPR including the Brand or any copyright without the prior written consent of the Department.
- 8.2 All Background IPR in which the Intellectual Property Rights are owned by or licensed to the Consultant ("Consultant Background IPR") shall remain the property of the Consultant but in consideration of the fees payable pursuant to this Contract the Consultant hereby grants to the Department a perpetual non-exclusive royalty-free licence (with right to sub-license) to use and reproduce all Consultant Background IPR to ensure that the Department enjoys the full benefit of all of its rights under this Contract and in particular in the Deliverables.
- 8.3 All IPR in the Deliverables developed or created by the Consultant pursuant to the Contract ("Created IPR") shall belong to and vest in the Crown absolutely.
- 8.4 For the avoidance of doubt, the Created IPR shall not include IPR in materials created by the Consultant outside of the scope of the Deliverables where these have been funded by a third party co-funder ("Co-funded Materials") but in consideration of the Consultant's use of the Brand for the purpose of securing the funding for the creation of the Co-funded Materials, the Consultant hereby grants to the Department a perpetual non-exclusive royalty-free licence (with right to sub-license) to use and reproduce all Consultant IPR in the Co-funded Materials.
- 8.5 In respect of IPR in materials to be used or created pursuant to the delivery of the Consultancy Services, which are owned by a third party, including IPR which are owned by a Co-funder in the Co-funded Materials ("Third Party IPR"), the Consultant shall use reasonable endeavours to procure a perpetual royalty-free licence of the Third Party IPR (with the right to sub-license), where necessary to enable the Department to enjoy its rights under the Contract.
- 8.6 The Consultant agrees that at the request and cost of the Department it will and procure that its officers, employees and agents will at all times do all such reasonable acts and execute all such documents as may be reasonably necessary or desirable to ensure that the Department receives the full benefit of all of its rights under this Contract in respect of the Created IPR or to assist in the resolution of any question concerning the Intellectual Property Rights.

- 8.7 In relation to the Created IPR, the Consultant hereby waives any Moral Rights as defined at Chapter IV of the Copyright, Designs and Patents Act 1988.
- 8.8 The Consultant warrants:
- 8.8.1 that the Created IPR comprise the original work of and were created by or on behalf of the Consultant;
- 8.8.2 that the Created IPR have not and will not be copied wholly or in part from any other work or material;
- 8.8.3 that the use of or exercise by the Department of the Created IPR and the Consultant's Background Intellectual Property will not infringe the rights of any third party;
- 8.8.4 that the Consultant has not granted or assigned any rights of any nature in the Created IPR to any third party.
- 8.9 The Consultant shall ensure that any copyright materials in the Deliverables produced by or on behalf of the Consultant shall be marked with the following copyright notice " © Crown Copyright ***year of publication***".
- 8.10 The Consultant shall ensure that the Brand and the Department's logo are both visible on the face of the Deliverables and in any materials, promotional or other communications, which are generated pursuant to the Consultant's performance of its obligations, including in relation to the seeking of additional funding for the creation of Co-funded Materials, under this Contract, but not otherwise without the prior written consent of the Department.

9. WARRANTY AND INDEMNITY

- 9.1 The Consultant warrants and represents to the Department that the obligations of the Consultant under this Contract will be performed by appropriately qualified and trained personnel to the standard or care and skill as set out in Clause 3.2. The Department will be relying upon the Consultant's skill, expertise and experience in the performance of the Consultancy Services and also upon the accuracy of all representations or statements made and the advice given by the Consultant in connection with the performance of the Consultancy Services and the accuracy of any documents conceived, originated, made or developed by the Consultant as part of this Contract. The Consultant warrants and represents that any goods supplied by the Consultant forming a part of the Consultancy Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.
- 9.2 Without prejudice to any other remedy, if any part of the Consultancy Services are not performed in accordance with this Contract then the Department shall be entitled where appropriate to:-
- 9.2.1 require the Consultant promptly to re-perform or replace the relevant part of the Consultancy Services without additional charge to the Department; or
- 9.2.2 assess the cost of remedying the failure (the "Assessed Cost") and to deduct from any sums due to the Consultant the Assessed Cost for the period that such failure continues; or
- 9.2.3 engage another person or organisation to carry out the Consultancy Services, in whole or in part, and all additional expenditure properly incurred by the

Department in having such services carried out shall be recoverable by the Department from the Consultant.

- 9.3 The Consultant shall be liable for and shall indemnify the Department in full against any expense, liability, loss, claim or proceedings arising under statute or at common law arising out of any breach by the Consultant or its officers, employees or agents of its obligations under this Contract or its negligence or otherwise resulting from any action or lack of action on the part of the Consultant except to the extent that such expense, liability, loss, claim or proceedings result from the default, act or omission of the Department.
- 9.4 All property of the Consultant or its officers, employees or agents whilst on the Department's premises shall be there at the risk of the Consultant and the Department shall accept no liability for any loss or damage howsoever occurring to it.
- 9.5 The Consultant shall ensure that it has adequate insurance cover with an insurer of good repute to cover claims under this Contract or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Contract. The Consultant shall upon request produce to the Department, policy or policies of insurance, together with the receipt for the payment of the last premium in respect of each policy or produce documentary evidence that the policy or policies are properly maintained.

10. TERMINATION

- 10.1 This Contract may be terminated by either party giving to the other party at least 30 days notice in writing.
- 10.2 Either party may terminate this Contract by notice in writing if the other party serves a notice on the other party that the other is in material breach of its obligations under this Contract and where such breach is capable of remedy requiring the breach to be remedied within 20 days of the notice. If the breach has not been remedied within 10 days, the party not in breach may terminate this Contract with immediate effect by notice in writing.
- 10.3 In the event of a material breach of this Contract which is not capable of remedy by either party, the other party may terminate this Contract with immediate effect by notice in writing.
- 10.4 A breach shall be deemed to be capable of remedy when it is capable of performance in all respects other than time for performance (save where time is of the essence).
- 10.5 This Contract may be terminated by the Department with immediate effect by notice in writing if at any time:
- 10.5.1 the Consultant passes a resolution that it be wound-up or that an application be made for an administration order or the Consultant applies to enter into a voluntary arrangement with its creditors; or
 - 10.5.2 a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Consultant's property, assets or any part thereof; or
 - 10.5.3 the court orders that the Consultant be wound-up or a receiver of all or any part of the Consultant's assets be appointed; or
 - 10.5.4 the Consultant is unable to pay its debts in accordance with Section 123 of the

Insolvency Act 1986; or

- 10.5.5 the Consultant is convicted (or being a company, any officers or representatives of the Consultant are convicted) of a criminal offence related to the business or professional conduct; or
 - 10.5.6 the Consultant commits (or being a company, any officers or representatives of the Consultant commit) an act of grave misconduct in the course of the business; or
 - 10.5.7 the Consultant fails (or being a company, any officers or representatives of the Consultant fail) to fulfil its obligations relating to the payment of Social Security contributions; or
 - 10.5.8 the Consultant fails (or being a company, any officers or representatives of the Consultant fail) to fulfil its obligations relating to payment of taxes; or
 - 10.5.9 the Consultant fails (or being a company, any officers or representatives of the Consultant fail) to disclose any serious misrepresentation in supplying information required by the Department in or pursuant to this Contract.
- 10.6 Nothing in this Clause 10 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.
- 10.7 The provisions of Clauses 8, 9, 14.2, 18 and 21 shall survive the termination or expiry of any part of this Contract.

11. AMENDMENT AND VARIATION

No amendment or variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto. The Consultant shall comply with any formal procedures for amending or varying contracts which the Department may have in place and notify to the Consultant from time to time.

12. EFFECT OF EXPIRY OR TERMINATION

- 12.1 On expiry or termination of this Contract however arising, the Consultant shall deliver to the Department (or as the Department directs) any documents and data (whether hard copy or electronic) incorporating the Department's Background IPR, the Created IPR together with any such licences as may necessary for the Department to receive the full benefit of the provisions under Clause 8 and any property belonging to the Department which may be in the Consultant's possession under its control.
- 12.2 On expiry or termination of this Contract however arising, the Consultant shall and shall procure that its officers, employees and agents shall, at no cost to the Department, promptly provide such assistance and comply with such timetable as the Department may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Consultancy Services (or their equivalent). The Department shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.
- 12.3 The assistance required by the Department under the provisions of Clause 12.2 may include (without limitation) the delivery of documents and data in the possession or control of the Consultant which relate to this Contract, including the documents and data, if any,

referred to in the Schedules.

- 12.4 The Consultant shall and shall procure that its officers, employees and agents shall do such other reasonable acts or things as may be necessary or desirable to enable the Department to accomplish an orderly and prompt transfer of responsibility for the provision of the Consultancy Services (or their equivalent).
- 12.5 The Consultant undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Department to ensure an orderly transfer of responsibility for the provision of the Consultancy Services (or their equivalent) and undertakes to procure that its officers, employees and agents shall not knowingly do or omit to do anything which may adversely affect the ability of the Department to ensure an orderly transfer of responsibility for the provision of the Consultancy Services (or their equivalent).
- 12.6 The Consultant shall not at any time after the expiry or other termination of this Contract represent itself as being a consultant of the Department or as being in any way connected with the Department.

13. ACCESS AND INFORMATION

The Consultant shall provide access at all reasonable times to the Department's internal auditors or the National Audit Office, and their employees, agents or representatives as they may reasonably request to inspect to such documents as the Department considers necessary in connection with this Contract. Such persons shall be entitled to take copies of or extracts from such accounts.

14. CONFLICT OF INTEREST

- 14.1 The Consultant acknowledges and agrees that (except as provided below) it will not act for any person or organisation that is or is reasonably likely to become a contractor of the Department in relation to the project for which the Consultancy Services are provided, in any capacity. For the avoidance of doubt, this Clause 14 shall not prevent the Consultant from providing services to an existing client of the Consultant to whom the Consultant is currently providing services provided that, where the Consultant is providing such services to such a person who is an existing client:

14.1.1 it shall not act for any such client in respect of any transactions between the Department and such client or its Associated Companies; and;

14.1.2 the Consultant will ensure that any personnel acting for any such client that are not already acting for the Department do not have access to information held by the Consultant relating to the Department.

- 14.2 This Clause shall survive the termination of the Consultant's appointment howsoever arising for a period of one year and shall continue in full force and effect.

15. STATUS OF CONSULTANT

- 15.1 In carrying out its obligations under this Contract the Consultant agrees that it will be acting as principal and not as the agent of the Department.
- 15.2 The Consultant warrants that it is a limited company duly registered in accordance with the law of England and Wales and that it shall provide services to the Department under the terms of this Contract as an independent contractor. The Consultant further warrants that it is the employer of any individuals who carry out the Consultancy Services on its

behalf and that nothing in this Contract shall be construed or have the effect of giving rise to a relationship of employer and employee between the Department or the Crown on the one hand and the Consultant or any of its officers or employees on the other, whether for the duration of the Contract, for the duration of each period for which the Consultant or an officer or employee of the Consultant is providing services to the Department pursuant to this Contract or otherwise.

16. TAX INDEMNITY

- 16.1 The Consultant warrants and represents to the Department that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and national insurance contributions which may be found due from it in relation to any payments or arrangements made under this Contract or in relation to any payments made by the Consultant to its officers or employees in connection with this Contract.
- 16.2 The Consultant will account to the appropriate authorities for any income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Consultant under this Contract or in relation to any payments made by the Consultant to its officers or employees in connection with this Contract.
- 16.3 The Consultant shall indemnify the Department against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant authority arising out of the performance by the parties of their obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by the Department in connection with any such assessment or claim.
- 16.4 The Consultant authorises the Department to provide the HM Revenue and Customs and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Contract whether or not the Department is obliged as a matter of law to comply with such request.

17. CONFIDENTIALITY

- 17.1 The Consultant acknowledges that any Confidential Information obtained from or relating to the Department, its servants or agents is the property of the Department.
- 17.2 Each party hereby warrants that:
 - 17.2.1 any person employed or engaged by it (in connection with this Contract in the course of such employment or engagement) shall treat all Confidential Information belonging to the other party as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Contract; and
 - 17.2.2 any person employed or engaged by it (in connection with this Contract in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without prior written consent of the other party, except where disclosure is otherwise expressly permitted by the provisions of this Contract.
- 17.3 The Consultant shall take all necessary precautions to ensure that all Confidential Information obtained from the Department is treated as confidential and not disclosed (without prior approval) or used other than for the purposes of this Contract by any of its employees, servants, agents or sub-contractors.

- 17.4 Without prejudice to the generality of the foregoing neither the Consultant or any person engaged by it whether as a servant or consultant or otherwise, shall use the Confidential Information for the solicitation of business from the Department whether directly or by its servants or consultants or any third party.
- 17.5 The Consultant shall ensure that their employees, servants or such professional advisors or consultants are aware of the Consultant's obligations under this Contract.
- 17.6 The provisions of clauses 17.1 to 17.5 inclusive shall not apply to any information received by one party from the other:
- 17.6.1 which is or becomes public knowledge (other than by breach of this Clause 17.6);
 - 17.6.2 which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;
 - 17.6.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 17.6.4 which is independently developed without access to the Confidential Information;
 - 17.6.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act or the Environmental Information Regulations.
- 17.7 Nothing in this Clause 17 shall be deemed or construed to prevent the Department from disclosing any Confidential Information obtained from the Consultant:
- 17.7.1 to any other Government Department, Non-Departmental or quasi Government body or agency, central or local, provided that the Department has required that such information is treated as confidential by the receiving departments, agencies or bodies and their servants or agents, including requiring servants or agents to enter into a confidentiality undertaking where appropriate; and
 - 17.7.2 to any consultant, contractor or other person engaged by the Department directly in connection with this Contract, providing that any Confidential Information disclosed shall not contain any direct or indirect references to any commercially sensitive information relating to the Consultant unless needed for the performance of their duties, the Department shall have obtained from the consultant, contractor or other person a signed confidentiality undertaking on substantially the same terms as are contained in this Clause 17 and the Department shall notify the Consultant of the identity of such consultant, contractor or other person as soon as practicable.
- 17.8 Nothing in this Clause 17 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business, to the extent that it does not result in a disclosure of Confidential Information or an infringement by either party of any Intellectual Property Rights.
- 17.9 Nothing in this Clause 17 shall prevent the Department from exercising licenses granted to it under this Contract or enjoying Intellectual Property Rights vesting in or transferring to it under this Contract.
- 17.10 The Consultant undertakes to make no reference in any advertising or other promotional

material to this Contract without the prior written consent of the Department.

- 17.11 Any findings and/or contents of reports produced under this Contract shall not be disclosed without the permission of the Department which shall not be unreasonably withheld.
- 17.12 In the event that the Consultant fails to comply with this Clause 17, the Department reserves the right to terminate the Contract by notice in writing with immediate effect.
- 17.13 The provisions under this Clause 17 are without prejudice to the application of the Official Secrets Act 1911 to 1989 to any Confidential Information.
- 17.14 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Consultant undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 17.15 The Consultant will immediately notify the Department of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Consultant will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Consultant's obligations under clauses 17.1, 17.2 and 17.3. The Consultant will co-operate with the Department in any investigation that the Department considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 17.16 The Consultant shall, at its own expense, alter any security systems at any time during the Contract Period at the Department's request if the Department reasonably believes the Consultant has failed to comply with clause 17.14.
- 17.17 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Department shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 17.18 Subject to Clause 17.17, the Consultant hereby gives his consent for the Department to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 17.19 The Department may consult with the Consultant to inform its decision regarding any redactions but the Department shall have the final decision in its absolute discretion.
- 17.20 The Consultant shall assist and cooperate with the Department to enable the Department to publish this Contract.

18. DATA PROTECTION

- 18.1 With respect to the parties' rights and obligations under this Agreement, the parties agree that the Department is the Data Controller and that the Consultant is the Data Processor.
- 18.2 The Consultant shall:
 - 18.2.1 Process the Personal Data only in accordance with instructions from the Department (which may be specific instructions or instructions of a general nature

as set out in this Agreement or as otherwise notified by the Department to the Consultant during the Term);

- 18.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- 18.2.3 Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 18.2.4 Take reasonable steps to ensure the reliability of any Consultant Personnel who have access to the Personal Data;
- 18.2.5 Obtain prior written consent from the Department in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;
- 18.2.6 Ensure that all Consultant Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 18;
- 18.2.7 Ensure that none of Consultant Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Department;
- 18.2.8 Notify the Department (within [five] Working Days) if it receives:
a request from a Data Subject to have access to that person's Personal Data; or
a complaint or request relating to the Department's obligations under the Data Protection Legislation;
- 18.2.9 Provide the Department with full cooperation and assistance in relation to any complaint or request made, including by:
- providing the Department with full details of the complaint or request;
 - complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Department's instructions;
 - providing the Department with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Department); and
 - providing the Department with any information requested by the Department;
- 18.2.10 Permit the Department or the Department's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Consultant's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Department to enable the Department to verify and/or procure that the Consultant is in full compliance with its obligations under this Agreement;
- 18.2.11 Provide a written description of the technical and organisational methods employed by the Consultant for processing Personal Data (within the timescales required by the Department); and
- 18.2.12 Not Process Personal Data outside the European Economic Area without the prior

written consent of the Department and, where the Department consents to a transfer, to comply with:

the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and

any reasonable instructions notified to it by the Department.

- 18.3 The Consultant shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Department to breach any of its applicable obligations under the Data Protection Legislation.

19. FREEDOM OF INFORMATION

- 19.1 The Consultant acknowledges that the Department is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Department to enable the Department to comply with its Information disclosure obligations.

- 19.2 The Consultant shall and shall procure that its Sub-contractors shall:

19.2.1 transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

19.2.2 provide the Department with a copy of all Information in its possession, or power in the form that the Department requires within five Working Days (or such other period as the Department may specify) of the Department's request; and

19.2.3 provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

- 19.3 The Department shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

- 19.4 In no event shall the Consultant respond directly to a Request for Information unless expressly authorised to do so by the Department.

- 19.5 The Consultant acknowledges that (notwithstanding the provisions of Clause 19) the Department may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Consultant or the Project:

19.5.1 in certain circumstances without consulting the Consultant; or

19.5.2 following consultation with the Consultant and having taken their views into account;

provided always that where 19.5.1 applies the Department shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Consultant advanced notice, or failing that, to draw the disclosure to the Consultant's attention after any such disclosure.

- 19.6 The Consultant shall ensure that all Information is retained for disclosure and shall permit the Department to inspect such records as requested from time to time.

20. ASSIGNMENT AND SUB-CONTRACTING

- 20.1 Neither the benefit nor the burden of this Contract may be assigned or sub-contracted in whole or in part by the Consultant without the prior written consent of the Department. Such consent may be given subject to any conditions which the Department considers necessary. The Department may withdraw its consent to any sub-contractor where it no longer has reasonable grounds to approve of the sub-contractor or the sub-contracting arrangement and where these grounds have been presented in writing to the Consultant.

- 20.2 Where the Consultant enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Consultant to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

- 20.3 The Consultant shall take all reasonable steps to satisfy itself that the sub-contractors (or their employees) are suitable in all respects to perform the services required by the Consultant.

- 20.4 The Consultant shall immediately notify the Department if it has any concerns regarding the propriety of any of the sub-contractors in respect of services rendered in connection with this Contract.

- 20.5 The Consultant or, where applicable its lawful assignees, shall at all times remain responsible for the proper performance of its obligations and for all the acts and omissions of its sub-contractors in connection with this Contract.

21. CORRUPT GIFTS AND PAYMENT OF COMMISSION

- The Consultant shall not, and shall ensure that its officers, employees, agents and sub-contractors shall not, pay any commission, fees or grant any rebates to any employee, officer or agent of the Department nor favour any employee, officer or agent of the Department with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Department other than as a representative of the Department, without the Department's written approval. The Department shall have the right to audit any and all such records necessary to confirm compliance with this Clause 21 at any time during performance of this Contract and during the three year period following completion of performance. Breach of this Clause 21 shall entitle the Department to terminate this Contract and any other contracts between the Consultant and the Department forthwith.

22. WAIVER

No delay by or omission by either party in exercising any right, power, privilege or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise

of any other right, power, privilege or remedy.

23. SEVERABILITY

If any provision or part of a provision of this Contract shall be or shall become unenforceable, void or invalid (as the case may be) such provision or part thereof shall not affect and shall be deemed to be severed from the remainder of this Contract to the intent that the remainder of the affected provision and this Contract shall be or shall continue to be fully enforceable and valid.

24. DISCRIMINATION

24.1 The Consultant shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.

24.2 The Consultant shall take all reasonable steps to secure the observance of Clause 24.1 by all servants, employees or agents of the Consultant and all suppliers and sub-contractors employed in the execution of the Contract.

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

A person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise then pursuant to that Act.

26. DISPUTE RESOLUTION

26.1 The parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract.

26.2 Any dispute not capable of resolution by the parties in accordance with the terms of Clause 26.1 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) model Mediation Procedure.

26.3 No party may commence any court proceedings in relation to any dispute arising out of this Contract until they have attempted to settle it by mediation in accordance with the provisions of Clause 26.2.

27. NOTICES

Any notices to be given under this Contract shall be delivered personally or sent by post or by facsimile transmission to the Contract Manager (in the case of the Department) or to the address set out in this Contract (in the case of the Consultant). Any such notice shall be deemed to be served, if delivered personally, at the time of delivery, if sent by post, 48 hours after posting or, if sent by facsimile transmission, 12 hours after proper transmission.

28. LAW AND JURISDICTION

This Contract shall be governed by and interpreted in accordance with English law and the parties submit to the jurisdiction of the English courts.

As witness the hands of the parties

SIGNED for and on behalf of the
SECRETARY OF STATE FOR EDUCATION by:

.....*J. Loosley*.....
Signature

.....JENNY LOOSLEY.....
Name in CAPITALS

.....DEPUTY DIVISION.....
Position in Organisation

SIGNED for and on behalf of
LEON RESTAURANTS LTD by:

.....*M. Jones*.....
Signature of Director

.....M B JONES.....
Name in CAPITALS

.....*Henry Dimpleby*.....
Signature of Director/Secretary

.....HENRY DIMPLEBY.....
Name in CAPITALS

SCHEDULE 1

SERVICES TO BE DELIVERED

1 Background

1.1 All school children should be offered food that is both tasty and good for them. In the seven years since Jamie Oliver began his campaign to improve school food in 2005, there has been a measurable improvement in the number of children taking up school meals and the nutritional quality of the food they are eating. This is the result of work done by a large array of people, including the School Food Trust, associated charities such as School Food Matters and Jamie Oliver's Foundation – not to mention the individual cooks, teachers, parents, pupils, outside caterers and local authorities who have embraced the cause.

There is, however, still much to do. A recent report for the School Food Trust indicated that quality varies across the country. Some schools have transformed their school dinners; many have also introduced food growing into the curriculum and continue to teach cooking, to give children a lasting education in eating well. But others still struggle to serve good-tasting, nutritious food. In addition there has been recent public debate about the quality of food in academies and what impact the removal of food and nutrition standards may have on it.

1.2 The Department is looking for a solution to be proposed by a neutral but highly qualified third party who can retain the confidence of Ministers and the sector. It is for this reason that we are engaging Henry Dimbleby and John Vincent, co-founders of Leon restaurants to conduct an independent review leading to an action plan.

2 Key Personnel

2.1 The following named individuals Henry Dimbleby and John Vincent shall be considered key personnel for the purpose of delivering the Services detailed in Schedule 1. The two named key personnel have broad experience of the commercial sector including catering, turning around failing businesses, supply chain issues, business start-up and running a catering chain enterprise. They also have strong media influencing skills so are uniquely placed for this commission.

3 Aims and Objectives

3.1 The Consultant shall use all reasonable endeavours to achieve the following aims and objectives:

- The Secretary of State for Education has asked Henry Dimbleby and John Vincent of Leon Restaurants to put together a school food plan that will build on the successes of the past seven years, accelerate the improvements in school food, and define what role schools have to play in shaping the eating habits of Britain's children. It is an independent review on behalf of the Secretary of State, and will report directly to him.

The plan will address two basic questions:

1. How will we get our children eating well in school?

- a. What more needs to be done to make tasty, nutritious food available to all school children?
 - b. How do we excite children about the food so that they want to eat it?
2. In addition to helping get children eating well in school, what role should cooking and food play more broadly in school life to enrich their home lives and leave a legacy for later in life?

The Consultants will work with the Department for Education – seeking input from sector bodies, existing campaign groups, local authorities, caterers and schools – to establish the facts needed to put together their plan. They will then produce:

1. A clear vision of what excellence looks like in a school, simply expressed and widely communicated. This will take both written and video form. It will contain a description from a child's perspective of what an excellent food school looks like as well as practical guidelines. Any head teacher who wants to make a difference can pick this up and see quickly what they should be aiming for.
2. A rich, easy-to-access archive of what works well. There are many examples of excellent practice out there, but schools often struggle to share the secrets of how to make it work. Seeing how other schools have made a success of their food policy – and how they overcame various practical hurdles on the way – is invaluable for other heads wanting to do likewise.
3. The Plan. This will set out what we need to do as a country to make sure that schools have what they need to deliver better food.

3.2 Tasks:

- i) carry out analysis and review of current school food provision;
- ii) formulate vision of excellence in school food and produce both written and video materials setting this out;
- iii) produce archive of resources demonstrating excellent practice in school food provision;
- iv) produce costed School Food Action Plan with recommendations.

3.3 Deliverables:

1. written and video materials setting out the Vision;
2. archive of materials demonstrating excellent practice in school food provision;
3. costed School Food Action Plan.

4 Methodology

The Consultant shall perform the tasks detailed in the following Schedule of Work.

5.1 SCHEDULE OF WORK

The output of the review is a costed action plan. The DfE is likely to produce a response detailing how the recommendations will be implemented. The aim is that the findings of the review will act as a consolidated evidence base for the department and sector. The

work of implementation will be the main use and legacy of the report.

Task	Deliverables	Date Required
i) carry out analysis and review of current school food provision; ii) formulate vision of excellence in school food and produce both written and video materials setting this out; iii) produce archive of resources demonstrating excellent practice in school food provision; iv) produce costed School Food Action Plan with recommendations.	1. Written and video materials setting out the Vision; 2. Archive of materials demonstrating excellent practice in school food provision; 3. Costed School Food Action Plan.	April 2013

End of Schedule 1

SCHEDULE 2

1. CHARGES

- 1.1 The Department shall pay the Consultant at the fixed daily rate of £400 with the number of days payable in the period from April 2012 to March 2013 limited to a maximum of 50 days each; and the number of days payable in April 2013 limited to 5 days each.
- 1.2 All fees, costs and expenses payable to the Consultant under this Contract are exclusive of VAT which shall in addition be payable by the Department where appropriate (at the times provided in this Contract) against delivery of a suitable VAT registration number.
- 1.3 Secretariat assistance for Consultancy Services under this Contract will be provided by the Department.
- 1.4 The Department shall reimburse the Consultant such reasonable travelling and hotel expenses wholly and reasonably incurred by the Consultant in connection with the provision of the Consultancy Services in accordance with the expenses policy of the Department from time to time. Payment of expenses shall be made only upon the provision of suitable VAT invoices relating to the provision of such expenses.
- 1.5 Such reasonable travelling and hotel expenses (clause 1.4 refers) shall be limited as follows and no other out of pocket expenses shall be allowable. For the avoidance of doubt where stated rates apply these shall be based on the Department's rates at the time of awarding the Contract and shall be fixed for the duration of the Contract.
- 1.5.1 hotel accommodation bed and breakfast, the Department to reimburse the Consultant actual expenditure which shall not exceed the Department's rates of London £110.00 including VAT, elsewhere £75.00 including VAT;
- 1.5.2 rail travel, the Department to reimburse the Consultant actual expenditure which shall be restricted to standard class;
- 1.5.3 car mileage, the Department to reimburse the Consultant at the Department's "Public Transport Rate" (PTR) of [23.8] 25p (for all miles travelled) pence per mile;
- 1.5.4 taxis, the Department to reimburse the Consultant actual costs only where their use can be justified against using public transport.

2. INVOICES

- 2.1 The Consultant shall prepare invoices on the last working day of each calendar month in arrears. The invoice should specify:
- 2.1.1 the number of days worked in that month;
- 2.1.2 the cumulative total of days worked since the contract commenced;
- 2.1.3 brief details of the outputs and outcomes delivered in that month;
- 2.1.4 breakdown of costs of any travel tickets and hotel accommodation expenditure incurred during that month, reasons for travel and/or visits undertaken with dates.

all expenditure to be supported by receipts; and

- 2.1.5 the balance of the maximum of 80 days still outstanding after payment of the invoice.
- 2.2 The Consultant its nominated representative or accountant shall certify on the invoice that the amounts claimed were expended wholly and necessarily by the Consultant on the Consultancy Services in accordance with the Contract and that the invoice does not include any costs being claimed from any other body or individual or from the Department within the terms of another contract.
- 2.3 Invoices shall be sent, within 5 days of the end of the relevant calendar month to Purchase to Pay, Shared Services, 3rd floor Companies House, Crown Way, Cardiff, CF14 3UW, quoting the Contract reference number. The Department undertakes to pay correctly submitted invoices within 10 days of receipt. The Department is obliged to pay invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Department. Any correctly submitted invoices that are not paid within 30 days may be subject to the provisions of the Late Payment of Commercial Debt (Interest) Act 1998. A correct invoice is one that complies with paragraph 2.1 of this Schedule; is delivered in timing in accordance with the contract; is for the correct sum; in respect of goods/services supplied or delivered to the required quality (or are expected to be at the required quality); includes the date, supplier name, contact details and bank details; quotes the relevant purchase order/contract reference and has been delivered to the nominated address. If any problems arise, contact the Department's Contract Manager. The Department aims to reply to complaints within 10 working days. The Department shall not be responsible for any delay in payment caused by incomplete or illegible invoices.
- 2.4 If this Contract is terminated by the Department for any reason at any time before completion of the Consultancy Services, the Department shall only be liable to reimburse eligible payments made by, or due to, the Consultant before the date of termination.
- 2.5 On completion of the Consultancy Services, the Consultant shall promptly draw-up a final invoice, which shall cover all outstanding expenditure incurred for the Consultancy Services. The final invoice shall be submitted not later than 30 days after the date of completion of the Consultancy Services. The Department shall not be obliged to pay the final invoice until the Consultant has carried out all the elements of the Consultancy Services as specified in Schedule 1.
- 2.6 It shall be the responsibility of the Consultant to ensure that the final invoice covers all outstanding expenditure for which reimbursement maybe claimed. Provided that all previous invoices have been duly paid, on due payment of the final invoice by the Department all amounts due to be reimbursed under this Contract shall be deemed to have been paid and the Department shall have no further liability to make reimbursement of any kind.

End of Schedule 2