schedule 2

cONDITIONS OF cONTRACT

**Section 1 - DEFINITIONS and INTERPRETATION**

* 1. In these Conditions the following items shall have the following meanings

The Commencement Date - the commencement date means (DATE)

The Council means Fleet Town Council

The Guaranteed Annual Fee means the sum of (INSERT ANNUAL FEE)

The Contract Period means two years from the date of commencement.

The Operator means the successful Tenderer to deliver the management and operation of the regular Saturday Markets and six specialist Sunday Markets on Gurkha Square

The Market Site means that area of Gurkha Square edged green on attached Plan

1.2 Nothing contained in this Agreement shall be construed as giving land rights by the Council to the Operator of the Market Site.

1.3 **Whole Agreement**

The Council and the Operator acknowledge that this Agreement contains the whole agreement between them and that they have not relied upon any oral or written representation made to them by the other or their employees or consultants and has made its own independent investigations into all matters relevant to it.

* 1. **Supersedes Prior Agreements.**

This Agreement supersedes any prior agreement between the Council and the Operator whether written or oral and any such prior agreements are cancelled as at the Commencement Date but without prejudice to any rights that may have already accrued to either of them.

* 1. **Notices and Other Communications**

 Any notice required to be given by either party to the other shall be in writing and shall be deemed to have been properly served if it is sent in a pre-paid Recorded Delivery envelope addressed to the Town Clerk or their representative at The Harlington, Fleet Hampshire GU51 4BY or to the Operator at the address given above. Any such notice shall be deemed to have been received on the day on which it was delivered.

* 1. **Proper Law and jurisdiction.**

English Law shall govern this Agreement between the Council and the Operator.

**SECTION 2 - PERFORMANCE**

2.1 Equal Opportunities

The Council is an equal opportunities employer and has various statutory duties to ensure that its services are delivered in a way that promotes equality and eliminates discrimination; in particular the Council must adhere to equality legislation.

The Council also expects that the successful Tenderer will promote equality, comply fully with all UK equality legislation or European equivalent, have an equalities policy and be an equal opportunities employer at all times during the Contract.

* 1. **The Market Site**

To accept the Market Site in its existing condition as at the date of this Agreement and to use it only for the purposes of an open market with stalls on it for the sale of all kinds of goods and merchandise but not for the sale of animals or for the sale of any goods and merchandise that cannot be lawfully sold.

* 1. **Operator obligations:**
1. Not to break open or interfere with the surface of the Market Site or to alter any building or erection on it without the express written consent of Fleet Town Council in addition to all other consents and permissions.
2. To be responsible for the provision and layout of stalls and to ensure that such stalls shall be of good quality and in good condition. The Council reserves the right to require the Operator to remove any stall that is not in good condition according to the opinion of the FTC Market Officer or his representative.
3. To maintain at his/her own expense any traffic management system to ensure a safe and secure market. This will ensure that vehicles can pass by the market and that public can access the market and highway safely.
4. That on any day that the market is held when there is no need for all of “the Market Site” due to insufficient traders and stalls, then that part of “the Market Site” not required will not be used for any other purpose unless agreed in advance by Fleet Town Council

**SECTION 3 - CONTROLS**

3.1 **Assignment**

Neither the Council nor the Operator shall without the consent of the other assign or transfer the benefit of this contact

* 1. **Compliance**

To comply at all times with the requirements of all appropriate legislation eg Health & Safety at Work, Food Hygiene etc. To allow the Council or its authorised representative to inspect the market for compliance.

3.3 **Right of entry**

Not to interfere with the right of the Council by its Officers and Servants with or without Workmen and others to enter the Market Site.

* 1. **Nuisance**

Not to hold or permit or suffer to be held or to allow anything to be done on the Market Site so as to be or become a source of nuisance or noise to the owners and occupiers of premises adjoining or in the environs of the Market Site.

3.5 **Identification**

Not to permit any stall to remain upon the Market Site unless there is displayed conspicuously and legibly upon the name and address of the person or persons carrying on business from that stall.

3.6 **Limit of Operation**

Not to allow any goods or articles or obstructions of any kind to remain outside the perimeter of the Market Site.

* 1. **Person in charge**

The Operator shall ensure that at all reasonable times he has on the site a competent person in charge. Any instruction given to that person by the Council’s Market Officer shall be deemed to have been issued to the Operator.

* 1. **Advertisements**

Any posters and advertisements displayed by the Operator on the Market Site shall relate solely to the activities on it and the size and character and contents of such posters and advertisements shall be subject to the prior approval of the Council. Any such posters shall only be erected on the day of the market and removed on the same day.

* 1. **Clean and Tidy Condition**

To ensure that at the end of each market day the site is left in a clean and tidy condition to the satisfaction of the Council’s Market Officer or his representative. Should the Market Officer or his representative consider that it is necessary to carry out further cleaning and tidying operations on the site or its vicinity then the Operator shall reimburse the Council for the total cost of such operations.

**SECTION 4 - PAYMENT**

4.1 **Payment**

The Operator shall pay the annual guaranteed fee to the Council to operate the market and the first 3 months payment shall be made on the date of this Agreement and thereafter quarterly for the duration of the contract.

* 1. **Other related payments**

In addition to the payment of the Annual Fee to be responsible for the payment of any rates taxes charges for services or any other similar charge that may be attributable to the Market Site as a result of entering into this Agreement.

* 1. **Waste charges**

To pay all charges for the collection and disposal of all rubbish and trade waste arising from the operation of the market

* 1. **VAT**

All sums payable under these Conditions unless otherwise stated are exclusive of VAT and other duties or taxes.

**SECTION 5 - INJURY DAMAGE AND INSRURANCE**

5.1 **Operators liability for loss injury or damage to property**

To accept full responsibility for and indemnify the Council against any damage to the Market Site and any other property of the Council or the District Council which has been caused by him or any agent of his or any stallholder or any other person associated with a stallholder.

* 1. **Operator’s liability for personal injury and death**

The Operator shall be liable for and shall indemnify the Council against all claims proceeding and costs and expenses whatsoever arising in respect of personal injury to or death of any person arising out of or in the course of or caused by the operation of the Market except to the extent that the same is due t any act or negligence of the Council, any Council’s Employee or any Statutory Undertaker

* + 1. **Operator’s Insurance for liability**

Without limiting or affecting his indemnities to the Council under clauses 5.1 and 5.2 the Operator shall effect and maintain insurance in respect of claims arising out of liabilities referred to in those clauses in a sum of not less that £10m (ten million pounds) in respect of this risk.

* 1. **Evidence of Insurance**

The Operator shall produce an insurance policy in evidence of payment of premiums on demand to the Council.

* 1. **Stallholder Liability**

The Operator shall ensure that each stallholder carries a public liability insurance cover in the minimum sum of £5m (five million pounds). Any stallholders unable to produce evidence of such insurance cover on being requested to do so by the Council shall cease trading. and be removed from the Market Site.

**SECTION 6 - TERMINATION**

6.1 **Breach of Conditions**

If there is any breach of these Conditions then the Council shall have the right to terminate

this Agreement but without prejudice to any right or remedy that it has in relation to any

antecedent breach by the Operator of any provisions of this Agreement.

6.2 **Failure to perform**

Failure to positively respond to the following notified breaches by the Operator may result in termination of the Contract:

* Not deliver a market on three consecutive Saturdays
* Not deliver 75% of the allocated stalls on the market for three consecutive Saturdays
* Not deliver a pre-agreed Sunday Market

6.3 **Performance Review**

The parties agree that a review of the Agreement and how the Market is performing shall take place sometime between 1 May 2020 and 30 June 2020 by a personal meeting between the parties and either party may terminate this Agreement by giving 6 months written notice of their election to terminate providing the notice is received by the other party within one month of the date of the review meeting. Thereafter there will be no right of termination other than the normal contractual rights that exist under English law, or by default of the Operator.

* 1. **Insolvency**

The Agreement shall terminate in the event of the Operator committing any act of bankruptcy or make any assignment for the benefit of his creditors or making any arrangements with his creditors for liquidation of his debts by composition or otherwise.

6.5 **Lease termination**

 In the event of cancellation of the lease by Hart District Council, the Council shall serve

 notice of termination on the Operator by giving the same notice period less one week.

**SECTION 7 SETTLEMENT OF DISPUTES.**

7.1 If a dispute or difference arises under this Contract which cannot be resolved by direct negotiation and resolution by the parties to this contract then the matter shall be referred to and settled by either of the joint Chief Executives of Hart District Council and their decision shall be final.

1. The Council gives Licence to the operator to use the Market Site in Gurkha Square Car Park (“the Market Site”) which is shown edged in Blue in the annexed plan for the purpose of a market from 28 September, 2019 until the 20 December 2021.