****

FOL17/224: SERPENTINE KITCHEN

CATERING CONCESSION CONTRACT

Section D

Conditions of Contract & Schedules

## (including Specification of Requirements)

## Dated 2017



1. **THE ROYAL PARKS LIMITED and**
2. **[THE CONCESSION HOLDER]**

**AGREEMENT**

**relating to the provision of the**

**SERPENTINE KITCHEN**

**CATERING SERVICES CONCESSION**

## TABLE OF CONTENTS

1. [GENERAL PROVISIONS 5](#_TOC_250064)
   1. [Definitions and Interpretation 5](#_TOC_250063)
   2. Initial Contract Period 13
   3. Concession Holder’s Status 13
   4. [TRP, its Capacity and Powers 13](#_TOC_250062)
   5. [Notices 13](#_TOC_250061)
   6. [Mistakes in Information 14](#_TOC_250060)
   7. [Conflicts of Interest 14](#_TOC_250059)
   8. [Preparation and Completion of Contract 15](#_TOC_250058)
   9. [Royal Parks Regulations 15](#_TOC_250057)
   10. [Concession Holder Obligations 15](#_TOC_250056)
   11. [Nature of Services 15](#_TOC_250055)
2. SUPPLY OF SERVICES 15
   1. [The Services 15](#_TOC_250054)
   2. Manner of Carrying Out the Services 16
   3. [Contract Management & Key Personnel 17](#_TOC_250053)
   4. Concession Holder’s Staff 18
   5. Induction Training 19
   6. [Casual Staff 20](#_TOC_250052)
   7. [On-going Staff Training 20](#_TOC_250051)
   8. [Staff Uniforms 21](#_TOC_250050)
   9. Customer Complaints 21
   10. [Tariffs 21](#_TOC_250049)
   11. [Provision and Removal of Equipment 22](#_TOC_250048)
   12. [Mobiles 24](#_TOC_250047)
3. MONITORING 24
   1. [Monitoring Progress Reports and Provision of Data 24](#_TOC_250046)
   2. [Computer-Readable Output 25](#_TOC_250045)
4. MARKETING AND COMMUNICATIONS 25
5. VEHICULAR ACCESS 26
6. SECURITY, WASTE MANAGEMENT, WILDLIFE AND SIGNAGE 27
   1. [Security 27](#_TOC_250044)
   2. [Waste management 28](#_TOC_250043)
   3. Pest Control 29
   4. [Wildlife 29](#_TOC_250042)
   5. [Signage 29](#_TOC_250041)
7. THE PREMISES 29
   1. [Licence to occupy Premises 30](#_TOC_250040)
   2. Cleaning of the Internal Areas of the Premises 31
   3. [Supply and Maintenance of Property 33](#_TOC_250039)
   4. Inspection of Premises 34
   5. [Planned Maintenance Programme 34](#_TOC_250038)
   6. Utilities 36
   7. [Office Accommodation 37](#_TOC_250037)
   8. [Right of Access to the Facilities 37](#_TOC_250036)
   9. [Off Site Production Premises 37](#_TOC_250035)
   10. [Capital Investment Project 37](#_TOC_250034)
8. ACCOUNTING AND CONTRACT PRICE PAYMENTS 38

Definition of Net Sales 38

* 1. [Commission Terms 39](#_TOC_250033)
  2. [Payments 39](#_TOC_250032)
  3. Maintenance of Accounting Records 41
  4. [Right of Audit 42](#_TOC_250031)
  5. [Taxation, National Insurance and Employment Liability 42](#_TOC_250030)
  6. [Recovery of Sums Due 43](#_TOC_250029)
  7. [Price adjustment on extension of the Initial Contract Period 43](#_TOC_250028)
  8. [Legislative Change 43](#_TOC_250027)
  9. [VAT 44](#_TOC_250026)

1. [STATUTORY OBLIGATIONS AND REGULATIONS 44](#_TOC_250025)
   1. [Prevention of Corruption 44](#_TOC_250024)
   2. [Prevention of Fraud 44](#_TOC_250023)
   3. [Discrimination 45](#_TOC_250022)
   4. [The Contracts (Rights of Third Parties) Act 1999 45](#_TOC_250021)
   5. [Environmental Requirements 45](#_TOC_250020)
   6. [Health and Safety & Food Safety 47](#_TOC_250019)
   7. Statutory Requirements and the Facilities 49
2. PROTECTION OF INFORMATION 49
   1. [Data Protection Act 49](#_TOC_250018)
   2. [Official Secrets Acts 1911 to 1989 & S182 of the Finance Act 1989 50](#_TOC_250017)
   3. [Confidential Information 51](#_TOC_250016)
   4. [Freedom of Information Act 2000 and Environmental Information Regulations 52](#_TOC_250015)
   5. Publicity, Media and Official Enquiries 53
   6. [Intellectual Property Rights 53](#_TOC_250014)
3. CONTROL OF THE CONTRACT 57
   1. [Transfer and Sub-Contracting 57](#_TOC_250013)
   2. [Waiver 57](#_TOC_250012)
   3. [Variation 58](#_TOC_250011)
   4. [Severability 59](#_TOC_250010)
   5. [Remedies Cumulative 59](#_TOC_250009)
   6. [Extension of Initial Contract Period 59](#_TOC_250008)
   7. [Entire Agreement 59](#_TOC_250007)
   8. [Scope and Validity of this Contract 60](#_TOC_250006)
   9. [Counterparts 60](#_TOC_250005)
4. LIABILITIES 60
   1. [Liability, Insurance and Indemnity 60](#_TOC_250004)
5. WARRANTIES AND REPRESENTATIONS 62
6. DEFAULT, DISRUPTION AND TERMINATION 63
   1. [Termination on insolvency and change of control 63](#_TOC_250003)
   2. [Remedies in the event of inadequate performance 64](#_TOC_250002)
   3. [Termination on Default 65](#_TOC_250001)
   4. [Break 66](#_TOC_250000)
   5. Consequences of Expiry or Termination…………………………………………………..66
   6. Disruption……………………………………………………………………………….… 66
   7. Recovery upon Termination………………………………………………………………..67
   8. Force Majeure………………………………………………………………………………68
   9. Concession Contracts Regulations 2016………………………………………………….. 69
7. HANDOVER……………………………………………………………………………...70
   1. Catalogue Information………………………………………………………………………70
   2. Schedule of Works………………………………………………………………………….70
   3. Dilapidation Works……………………………………………………………………….....70
   4. Access and Recovery on Default…………………………………………………………....70
   5. Removal of Concession Holder’s Property………………………………………………....70
   6. Liability on Removal………………………………………………………………………....71
   7. Signage etc., or Property……………………………………………………………………71
   8. Health and Safety File Documents and Records……………………………………………71
   9. TUPE………………………………………………………………………………………...71
   10. Indemnity arising on Handover……………………………………………………………..73
   11. Access to Representatives of any Prospective Service Provider…………………………...73
   12. Co-Operation on Handover………………………………………………………………...73
   13. Keys……………………………………………………………………………………….....74
   14. Antecedent Rights and Remedies…………………………………………………………...74
   15. Computer Documents……………………………………………………………………....74
8. GOVERNING LAW AND DISPUTE RESOLUTION (INCL. MINOR BREACHES)……………………………………………………………………………...74

NOT USED

1. GOVERNING LAW AND DISPUTE RESOLUTION (INCL. MINOR BREACHES)………………………………………………………………………………74
   1. Governing Law and Jurisdiction……………………………………………………………..75
   2. Dispute Resolution………………………………………………………………………….76
   3. Minor Breaches……………………………………………………………………………...78
2. [SURETY]……………………………………………………………………………...…79

PROPERTY SCHEDULE…………………………………………………………………………..81

PREMISES SCHEDULE…………………………………………………………………………….82

COMMISSION PRICING SCHEDULE………………………………………………………….....83

MONITORING SCHEDULE…………………………………………………………………...….84

PLANNED MAINTENANCE PROGRAMME SCHEDULE……………………………………….87

ROYAL PARKS ENVIRONMENTAL POLICY SCHEDULE……………………………………...88

CONDITION SURVEY SCHEDULE……………………………………………………………...90

SPECIFICATION SCHEDULE…………………………………………………………………….92

SCHEDULE OF SITE SPECIFIC REQUIREMENTS………………………………………………..93

CAPITAL INVESTMENT PROJECT SCHEDULE…………………………………………………94

**T H I S A G R E E M E N T is made the day of 2017**

## B E T W E E N

1. THE ROYAL PARKS LIMITED (hereinafter called ‘TRP’)) whose registered office is at the Old Police House, Hyde Park, London, W2 2UH (Company number 10016100);

( Registered Charity Number 1172042) and

1. <INSERT COMPANY NAME> (hereinafter called “the Concession Holder”), a company registered in England and Wales under company number <insert number> and having its registered office at <insert address>.
2. Surety Details

## INTRODUCTION

1. The Secretary of State for Culture Media and Sport (“the Secretary of State”) is responsible for the management of the Royal Parks by virtue of section 22 of the Crown Lands Act 1851 (as amended by other legislation) and pursuant to The Contracting Out (Functions relating to the Royal Parks) Order 2016 the Secretary of State has authorised TRP to manage the Royal Parks on behalf of the Secretary of State.
2. TRP has appointed the Concession Holder to provide Catering Services at the Serpentine Kitchen within Hyde Park in accordance with the terms of this Contract.

## A GENERAL PROVISIONS

## A.1 Definitions and Interpretation

A.1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Actual Capital Expenditure” means the sum actually incurred by the Concession Holder in carrying out the Capital Investment Project as calculated in accordance with the Capital Investment Project Schedule

“Approval” and “Approved” means the prior written consent of TRP

“Brand User Guidelines” means the Brand Guidelines currently in force as amended or updated by TRP from time to time; the version currently in force and in use at the date of this Contract being provided as an annex and initialled on behalf of the Parties by way of acknowledgement as to the terms for the use of the Trade Marks.

“Capital Investment Project” means the project as detailed in the Capital Investment Project Schedule attached.

“Capital Investment Sum” means the sum identified in the Capital Investment Project Schedule.

“CDM Regulations” refers to the Construction (Design and Management) Regulations 2015.

“Commencement Date” means 23rd January 2018.

“Commission Pricing Schedule” means the Commission Pricing Schedule containing details for the calculation of commission (exclusive of any applicable VAT) in accordance with clause [H.2.](#_bookmark19)

“Confidential Information” means any and all information (howsoever communicated and/or reproduced including without limitation in writing, pictures, tables, graphs, photographs, moving image, orally or electronically) of whatever nature (including without limitation plans, designs, operational procedures, methods, financial information (including accounts and budgets) and copyright material) relating to this Contract, the parties and the business and affairs thereof and all persons connected with this Contract including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA (as hereinafter defined).

“Concession Holder” means the person, firm or company with whom TRP enters into this Contract.

“Condition Survey” means the survey reports set out in the attached Condition Survey Schedule recording the Identified Works.

“Contract” means this written agreement between TRP and the Concession Holder consisting of these clauses and any attached Schedules.

“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006.

“Contract Manager” means the individual authorised to act on behalf of the Concession Holder for the purposes of the Contract.

“Contract Period” means the period from the Commencement Date to:

1. the date of expiry set out in clause [A.2](#_bookmark0) (Initial Contract Period), or
2. following an extension pursuant to clause [K.6](#_bookmark53) (Extension of Initial Contract Period), the date of expiry of the extended period;

or such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

“Contract Price” means the total sum due by way of payment of commission in respect of each Financial Year calculated (exclusive of any applicable VAT) in accordance with clause [H.2.](#_bookmark19)

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

“Default” means any material breach of the obligations of the relevant Party.

“Depreciating Property” means any equipment or plant which is acquired during the Contract Period by the Concession Holder with the Approval of TRP and which the parties agree to treat as such for the purposes of this Contract as part of the Capital Investment Project.

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under such 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.

“Early Termination Payment” means the sum equal to the amount R where R is calculated as R = (C divided by 60) x M

Where C = Capital Investment Sum

M = difference in the number of months between the Initial Contract Period and the date of earlier termination of the Contract pursuant to clause N.4 (Break)

“Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“Equipment” means the Concession Holder’s equipment, plant, materials and such other items supplied and used by the Concession Holder in the performance of its obligations under the Contract (other than the Property and the Depreciating Property).

“Equipment Register” means a written register recording the Equipment as required pursuant to clause [B.11.4.](#_bookmark6)

“External Areas of the Premises” means the areas between the external parts of the buildings shown edged red and the boundary shown edged blue on the drawings annexed hereto.

“Facilities” means the Premises and the Mobile from which the Services are to be supplied

“Financial Year” means the financial year of TRP commencing on the 1st April in each calendar year.

“FOIA” means 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.

“Force Majeure” means any event which can reasonably be considered to be outside the reasonable control of the party concerned and which is not attributable to any act or failure to take preventive action by the party concerned, including act of terrorism, material threat of an act of terrorism, inability to obtain essential fuel, power, raw materials, labour, containers or transportation, accident, malfunction of machinery or apparatus, epidemic, avian flu, death, fire, storm, flood or explosion of any kind, Act of God, war, insurrection, natural disaster, riot, civil commotion, the demise of a member of The Royal Family such that it would require cancellation of the Services in whole or in part, and equivalent circumstances which the party concerned could not be reasonably expected to foresee or provide for in advance, but shall not include any industrial action occurring within that party’s organisation or within any sub-contractor's organisation.

“Fraud” means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

“Friends and Volunteers” means the Friends of Hyde Park and Kensington Gardens, together with Royal Parks volunteers, or volunteers of the Friends of Hyde Park and Kensington Gardens.

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Identified Works” means the maintenance and/or repair works identified as priority 1 and priority 2 works in the Condition Survey.

“Information” has the meaning given under section 84 of the FOIA.

“Initial Contract Period” means the period from the Commencement Date to the date of expiry set out in clause [A.2](#_bookmark0) (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

“Invitation to Tender” means the document(s) submitted by TRP to suppliers for formal offers to supply it with the Services.

“Intellectual Property Rights” ” means patents, inventions, Trade Marks, service marks, logos, trade names, registered and unregistered designs rights, trade or business names, copyright (including rights in software), database rights, domain names, customer data, rights in confidential information and any other intellectual property rights whatsoever irrespective of whether such intellectual property rights have been registered or not which may subsist in any part of the world and the right to sue for passing off.

“Internal Areas of the Premises” shall mean the internal parts of the buildings forming the Premises shown edged blue on the drawings annexed hereto bounded by and including:

1. the floorboards and floor screed;
2. the internal finish of the ceiling including any water tank within the roof void and roof tank on the roof including tank lagging thereof;
3. the interior plasterwork and finishes of exterior walls and columns;
4. the plasterwork and finishes of the interior structural and/or load-bearing walls and columns;
5. all doors and windows both within the interior and on the exterior and their frames and fittings;
6. one half of the thickness of the interior, non-structural and/or non-load-bearing walls and columns (where these adjoin any neighbouring property);
7. all service media within the Premises which exclusively serve the Premises as far as the first meter ( gas and electricity) and the first manhole ( drainage) and the first stop tap (water);

but excluding:

1. the whole of the interior structural load-bearing walls and columns other than their plasterwork and other than the doors and windows and their frames and fittings within such walls;
2. Roof trusses or roof load bearing beams; and
3. all service media within the Premises which do not exclusively serve the Premises.

“Key Personnel” means those persons named in accordance with clause [B.3.8](#_bookmark4) as being key personnel.

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Concession Holder is bound to comply.

“Logo” means the logo as applied and developed for use by TRP in the Brand User Guidelines.

“Minimum Annual Commission Payment” means the minimum annual commission payable by the Concession Holder to TRP as stipulated in the Commission Pricing Schedule.

“Minimum Trading Hours” means the hours indicated in the Specification Schedule.

“Mobile(s)” means the mobile catering unit which has been Approved by TRP

“Monitoring Schedule” means the Schedule containing details of the monitoring arrangements.

“Month” means calendar month.

“Net Sales” has the meaning more particularly defined and set out in clause [H.1.](#_bookmark18)

“Non-Commissionable Sales” means discounted sales to staff employed by TRP and card carrying Friends and Volunteers.

“Off-Site Production Premises” means the premises which are not situated within the Park where the Concession Holder prepares items for sale before delivery to the Facilities.

“Park” means the area which is for the time being under the control or management of TRP and known as Hyde Park and to which the Park Regulations apply.

“Park Opening Hours” means the Opening Hours as confirmed in the Specification Schedule.

Party” means a party to the Contract.

“Planned Maintenance Programme” means the planned maintenance programme (including reactive and future upkeep and maintenance set out in the attached Planned Maintenance Programme Schedule) for the upkeep and maintenance of the Premises as is referred to in clause [G.5](#_bookmark17) or the Property as is referred to in clause [G.3.](#_bookmark15)

“Premises” means the Premises from where the Services are to be supplied, as shown edged red on the drawings annexed hereto together with the Mobiles.

“Premises Licence” means the licence issued pursuant to the Licensing Act 2003 in relation to the Facilities.

“Property Schedule” means the attached Schedule describing the Property and the Depreciating Property.

“Property” means the equipment, plant, materials and such other items supplied or made available to the Concession Holder by TRP in connection with the Contract and intended to be used by the Concession Holder in the performance of its obligations under the Contract (excluding Equipment, Depreciating Property and real property) the particulars of which are described in the Property Schedule.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Concession Holder would reasonably and ordinarily be expected to comply with.

“Rectification Meeting” means a meeting attended by TRP Representative and the Contract Manager in accordance with clause (Q.3.3).

“Receipt” means the physical or electronic arrival of the invoice at the address of Concession Holder detailed at clause [A.5.3](#_bookmark3) or at any other address given by the Concession Holder to TRP for the submission of invoices.

“Replacement Concession Holder” means any third party service provider appointed by TRP to supply any services which are substantially similar to any of the Services and which TRP receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

“Request for Information” shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

“Relevant Conviction" means a conviction that is relevant to the nature of the Services.

“Royal Parks Environmental Policy Schedule” means the Schedule containing details of the environmental policy of TRP.

“Royal Parks Police” shall mean the Metropolitan Police Services (Royal Parks Operational Command Unit).

“Royal Parks Representative” means any individual authorised to act on behalf of TRP for the purposes of this Contract.

“RPI” means the All Items Retail Price Index published by the Office for National Statistics or in the event that such index ceases to be published a similar index

“Schedule” means a schedule attached to, and forming part of, this Contract.

“Schedule of Works” means a schedule detailing the works that TRP determine that the Concession Holder needs to undertake to the Premises to return them to a reasonable condition.

“Services” means the provision of a high class catering outlet supplying hot and cold food and beverages for consumption on/off the Facilities.

“Special Event” is any event within the Park which is either:

1. a state/ceremonial event or event of national importance;
2. an event organised by other Government Departments or Agencies such as fairs or exhibitions; or
3. an event organised by or with the permission of TRP which is by way of public entertainment.

“Specification Schedule” means the attached Schedule detailing the specification of requirements for the Services.

“Staff” means all persons employed by the Concession Holder to perform its obligations under the Contract together with the Concession Holder’s servants, agents and suppliers used in the performance of its obligations under the Contract.

“Staff Vetting Procedure” means the procedure for the vetting of personnel as may from time to time be in force under the Concession Holder’s established vetting procedures for its Staff and which the Concession holder shall establish and maintain pursuant to clause [B.4.3](#_bookmark5) and to comply with any current employment law requirements as may from time to time be in force.

“Tender” means the document(s) submitted by the Concession Holder to TRP in response to TRP’ invitation to suppliers for formal offers.

“Tender Pricing Strategy” means the Pricing Strategy submitted as part of the Tender which sets out the approach to pricing for the Contract Period.

“Trade Marks” means the trade names, trademarks and logos used by TRP in the style(s) set out in the Brand User Guidelines.

“TRP” means The Royal Parks Limited, company number 10016100.

“Variation” has the meaning given to it in clause [K.3.1](#_bookmark51) (Variation).

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

* + 1. The interpretation and construction of this Contract shall be subject to the following provisions:
       1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
       2. words importing the masculine include the feminine and the neuter;
       3. reference to a clause is a reference to the whole of that clause unless stated otherwise;
       4. reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
       5. reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
       6. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
       7. headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.
       8. in the event of any conflict between the Schedules, the clauses of the Contract, and or any other document referred to in the clauses of the Contract then the conflict shall be resolved in accordance with clause [K.7.2.](#_bookmark54)

## Initial Contract Period

The Contract shall take effect on the Commencement Date and shall expire automatically on the 22nd January 2023, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause [K.6](#_bookmark53) (Extension of Initial Contract Period).

## Concession Holder’s Status

* + 1. At all times during the Contract Period the Concession Holder shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.
    2. The Concession Holder shall perform its obligations in accordance with the terms of the Contract.

## 

## A.4 TRP, its Capacity and Powers

A.4.1 a) Save as otherwise expressly provided, the obligations of TRP under the Contract are obligations of TRP in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain TRP in any other capacity, nor shall the exercise by TRP of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of TRP to the Concession Holder.

b) The Concession Holder hereby acknowledges and accepts that TRP enters into this Contract solely in its capacity for the management of the Park by virtue of Section 22 of the Crown Lands Act 1851 (as amended by other legislation) and authorisation pursuant to The Contracting Out (Functions relating to the Royal Parks) Order 2016 and not in any other capacity.

c) Nothing in this Contract shall restrict TRP’s powers or rights to perform any other functions (whether statutory or otherwise) pursuant to Section 22 of the Crown Lands Act 1851 (as amended by other legislation) and neither shall it purport (by implication or otherwise) to extend TRP’s statutory obligations beyond those required for the management of the Park including in respect of any structures lying within the Park (whether above or below the surface) that may be the subject of separate statutory control or provision.

## A.5 Notices

* + 1. Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

* + 1. Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail. A letter shall be addressed to the other Party in the manner referred to in clause [A.5.3](#_bookmark3) Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
    2. For the purposes of clause [A.5.2,](#_bookmark2) the address of each Party shall be:
       1. For TRP:

The Royal Parks

The Old Police House Hyde Park

London W2 2UH

For the attention of: Andrew Varnava

Tel: 0300 061 2048

email: avarnava@royalparks.gsi.gov.uk

* + - 1. For the Concession Holder:

*[ ]*

*[Address: ]*

*[ ]*

*For the attention of: Tel:*

*email:*

* + 1. Either Party may change its address for service by serving a notice in accordance with this clause.

## A.6 Mistakes in Information

A.6.1 The Concession Holder shall be responsible for the accuracy of all drawings, documentation and information supplied to TRP by the Concession Holder in connection with the supply of the Services and shall pay TRP any extra costs occasioned by any discrepancies, errors or omissions therein.

## A.7 Conflicts of Interest

* + 1. The Concession Holder shall take appropriate steps to ensure that neither the Concession Holder nor any Staff are placed in a position where, in the reasonable opinion of TRP, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Concession Holder and the duties owed to TRP under the provisions of the Contract. The Concession Holder will disclose to TRP full particulars of any such conflict of interest which may arise.
    2. TRP reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of TRP, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Concession Holder and the duties owed to TRP under the provisions of the Contract. The actions of TRP pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to TRP and the provision of this clause shall apply during the continuance of this Contract and indefinitely after termination.

## A.8 Preparation and Completion of Contract

A.8.1 The Concession Holder shall in relation to the preparation and completion of this Contract pay all costs and expenses incurred by TRP and also its own costs and both parties shall from time to time do all such acts and execute all such documents as may be reasonably necessary in order to give effect to the terms and provisions of this Contract.

## A.9 Royal Parks Regulations

A.9.1 The Concession Holder shall comply with “The Royal Parks and Other Open Spaces Regulations 1997” ( ‘the Regulations’) and any subsequent Regulations and this Contract shall constitute the written permission of the Secretary of State required under the Regulations for the activities licensed herein to take place subject to the terms and conditions of this Contract.

## A.10 Concession Holder Obligations

A.10.1 Any obligation on the Concession Holder not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.

## A.11 Nature of Services

A.11.1 The Concession Holder shall be deemed to have been satisfied as regards the nature and extent of the Services, the means of communication with and access to the Facilities, and the supply of labour.

## SUPPLY OF SERVICES

## B.1 The Services

* + 1. The Concession Holder shall in the period immediately before the Commencement Date and in accordance with the reasonable instructions of TRP make all necessary preparations for provision of the Services.
    2. The Concession Holder will be responsible for paying all operating costs associated with the supply of the Services and the operation of the Facilities including but not limited to food and beverages, staffing costs, energy, telephone, tills, IT systems, training, cleaning (including deep cleans and cleaning of extraction trunking), and laundry.
    3. The Concession Holder shall supply the Services from and within the Facilities during the Contract Period upon the terms and conditions of this Contract including without limitation those set out in the Specification Schedule and in accordance with all applicable legislation
    4. TRP may inspect and examine the manner in which the Concession Holder supplies the Services at the Facilities during normal business hours on reasonable notice.
    5. The Concession Holder shall be expected to agree a business continuity plan with TRP on commencement of the Contract, a copy of which shall be sent to TRP. The Concession Holder shall review and update the plan bi-annually and provide details to TRP and shall also observe the requirements of TRP’ own business continuity plans for the Park.
    6. The Concession Holder shall ensure that their emergency plans and systems can be implemented in co-ordination with those of TRP and shall obtain Approval of the Concession Holder’s emergency evacuation plan. The Concession Holder shall answer to the Park Manager or their nominated representative during an emergency evacuation.
    7. The Concession Holder shall work in partnership with TRP to develop new emergency systems and procedures where required and to ensure that the staff (including temporary workers) are fully aware of, and trained in, such systems and procedures before or at the beginning of their first day at work, to include but not be limited to: the importance of signing in and out of the building; location of fire exits; evacuation routes; what the fire alarm sounds like and the location of the Park muster point.
    8. The Concession Holder shall provide TRP with emergency contact details for the Contract Manager to facilitate out of hours contact in an emergency.
    9. At TRP’s written request, the Concession Holder shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Facilities, specifying the capacities in which they are concerned with the Contract and giving such other particulars as TRP may reasonably request.
    10. The decision of TRP as to whether any person is to be refused access to the Facilities shall be final and conclusive.

## Manner of Carrying Out the Services

* + 1. The Concession Holder will provide the Services for not less than the Minimum Trading Hours.
    2. In carrying out the Services, the Concession Holder shall:
       1. promptly notify TRP of anything beyond their control which materially affects the quality of the provision of the Services;
       2. promptly report to TRP any matter whatsoever brought or coming to their attention, whether or not connected in any way with the performance of the Contract, which affects or is likely to affect the public enjoyment of the Park, or which endangers or is likely to endanger the health or safety of any person;
    3. The Concession Holder shall carry out the Services in a manner which does not unnecessarily or unreasonably inconvenience or interfere with the use and enjoyment of the Park by any other person. They shall report to TRP if in their view such inconvenience or interference is likely to arise from performing the Services.
    4. The Concession Holder shall:
       1. to the extent that the standard of work has not been specified in the Contract agree the relevant standard of the Services with TRP prior to the supply of the Services;
       2. use the best applicable techniques and standards and execute the Contract with all reasonable care, skill and diligence; and
       3. provide the Services in accordance with Good Industry Practice, Quality Standards and the Law and shall maintain accreditation with the relevant Quality Standards authorised body.
    5. The Concession Holder shall introduce operating manuals, checklists and a formal quality assurance programme.
    6. The introduction of new methods or systems which impinge on the provision of the Services shall be subject to Approval.

## B.3 Contract Management & Key Personnel

* + 1. The Key Personnel for the purposes of this Contract shall mean the Contract Manager, the deputy to the Contract Manager and the Head Chef.
    2. Unless given Approval, the Concession Holder shall make the Contract Manager and his/her deputy available for the entire period needed to fulfil their part in the provision of the Services.
    3. The Concession Holder shall obtain the Approval of TRP before removing or replacing any Key Personnel during the Contract Period, and written notice must be provided by the Concession Holder of their intention to replace Key Personnel within a minimum of 3 Working Days of the Concession Holder becoming aware that the Key Personnel will be unable to continue permanently to contribute to the provision of the Services (for any reason whatsoever).
    4. TRP may interview the candidates for Key Personnel positions before they are appointed.
    5. TRP shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Concession Holder.
    6. The Concession Holder acknowledges that the Key Personnel are essential to the proper provision of the Services to TRP. Unless otherwise agreed in writing between the Parties, the Concession Holder shall ensure that the role of any Key Personnel is not vacant for any longer than 10 Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel.
    7. To the extent that it can do so without disregarding its statutory obligations, the Concession Holder shall take all reasonable steps to ensure that it retains the services of all the Key Personnel.
    8. TRP may identify any of the Concession Holder personnel as Key Personnel, who will then be included on the list of Key Personnel by Concession Holder.
    9. TRP may also require the Concession Holder to remove any Key Personnel from the Facilities that TRP considers in any respect unsatisfactory. TRP shall not be liable for the cost of replacing any Key Personnel.
    10. The Concession Holder shall use its best endeavours to ensure that the Key Personnel are contactable during Park Opening Hours and during all hours of operation there shall be a designated supervisor at the Premises who will be responsible for the safe running of the Services.
    11. Unless otherwise agreed in writing by TRP the Concession Holder shall provide TRP with a replacement to cover any periods of planned or unplanned absence of the Key Personnel.
    12. If any of the Key Personnel shall be prevented by illness or injury from performing the Services, the Concession Holder shall report the fact to TRP and, in the case of an absence of uncertain duration, shall keep TRP informed of its expected duration. Unless otherwise agreed in writing between the Parties, if the absence through illness or injury continues for more than 5 consecutive days, the Concession Holder shall provide TRP with a replacement for the period of absence.
    13. The Concession Holder shall establish a management structure that clearly defines lines of authority, responsibility and accountability and details of such structure shall be forwarded to TRP and shall be updated throughout the term of the Contract.

## Concession Holder’s Staff

* + 1. TRP may, by written notice to the Concession Holder, refuse to admit entry, or withdraw permission to remain in, the Park any member of the Staff including any Key Personnel whose admission or continued presence would, in the reasonable opinion of TRP, be undesirable.
    2. The Concession Holder’s Staff, engaged within the boundaries of the Park, shall comply with such rules, regulations, including the Regulations as amended from time to time, and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when within the Park.
    3. The Concession Holder shall establish an appropriate Staff Vetting Procedure in respect of all persons employed or engaged in the provision of the Services which shall be submitted for Approval before adoption in respect of the provision of the Services.
    4. The Concession Holder shall ensure that all persons employed or engaged by the Concession Holder were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedure and where required or appropriate under the Staff Vetting Procedure has undertaken a disclosure and barring check in respect of any person employed in the provision of the Services.
    5. The Concession Holder shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Concession Holder to have a Relevant Conviction is employed or engaged in the provision of any part of the Services.
    6. The Concession Holder shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence in a quiet courteous and professional manner.
    7. All Staff shall be of a high calibre and shall possess the qualifications, language ability and competence appropriate to the tasks for which they are employed and to deliver an efficient catering service and to achieve high standards of customer satisfaction.
    8. The Concession Holder shall maintain a record for each member of Staff of their qualifications, training records and training schedules, and shall make available all such records and copies of certificates to TRP on request.
    9. The Concession Holder shall be required to train all Staff to respond in an intelligent and informative way to questions from members of the public. TRP will provide background information about the Park to support this.
    10. The Concession Holder shall employ Staff on rates of pay that attract, retain and motivate high calibre individuals and it is expected that those rates will be increased at least in line with RPI year on year.
    11. The Concession Holder shall be responsible for checking new employees eligibility to work in the United Kingdom and shall retain evidence of eligibility on their personnel files.

## Induction Training

* + 1. The Concession Holder shall undertake an induction programme with all new Staff to familiarise the individual with his/her new work. The induction programme shall include, but not be limited to the following:
       1. client familiarisation, including brief history of TRP, the TRP brand, and the Park in particular;
       2. hygiene, health and safety;
       3. personal appearance;
       4. customer service, relations, care and inter-personal skills;
       5. fire, emergency and evacuation procedures;
       6. sales and up selling techniques;
       7. dish composition;
       8. specific company procedures of the Concession Holder
    2. Whilst the induction programme is expected to provide a brief overview of these subjects, it is expected that more detailed coverage will be provided in subsequent training.

## B.6 Casual Staff

* + 1. When employing casual Staff the Concession Holder shall use agents who can verify that staff have a background appropriate to achieving the high standards set for the Services and who have completed appropriate security and legal checks.
    2. The Concession Holder shall manage an induction process for casual Staff so that they are aware of relevant rules and regulations and of procedures for the Services. Casual Staff shall perform to the same service standards as their permanent colleagues.

## B.7 On-going Staff Training

* + 1. The Concession Holder shall train Staff to the minimum legal standards, although TRP would like to see the Concession Holder committed to further staff training, which enhances the customer experience of the Services and the Staff's commitment.
    2. The Concession Holder shall conduct customer care training throughout the term of the Contract and shall place a high emphasis on this important aspect. The Concession Holder shall continually train Staff in the area of sales, up selling and dish/menu knowledge and this shall be measured in the mystery diner reviews.
    3. It is expected that all Staff will have a personal training plan reviewed annually, a copy of which will be retained on site. It is expected that the Concession Holder shall introduce regular staff appraisals.

## B.8 Staff Uniforms

B.8.1 The Concession Holder will require its Staff to wear uniforms provided by the Concession Holder which should be of a high standard in both quality and appearance. Uniform colours must be selected from TRP colour palette as per the Brand User Guidelines and should bear the Logo together with the name of the Concession Holder. This may be included on shirts, aprons or name badges. All designs will be subject to the Approval, which will not be unreasonably withheld. Appropriate protective clothing and safety shoes shall be provided for kitchen staff by the Concession Holder. Staff will be required to wear badges.

## B.9 Correspondence and Customer Complaints

* + 1. Where a customer has a legitimate complaint concerning the standard of foodservice, he/she shall be offered either a refund or the opportunity of another meal/replacement product with the compliments of the Concession Holder.
    2. Refunds are to be treated as an item of catering expenditure and are not to be deducted from turnover. Likewise, replacement meals are to be treated as an item of catering expenditure. In both cases the cost is to be borne by the Concession Holder.
    3. All correspondence with clients and suppliers for public and events catering as part of the Services shall refer to the trading relationship with TRP so that it is clear the Concession Holder is operating under a license to TRP rather than under an independent lease. The Concession Holder’s signature or logo reference on marketing material shall always state “on behalf of TRP” or where relevant “Hyde Park” or an equivalent description of the trading relationship between TRP and the Concession Holder.

## B.10 Tariffs

* + 1. The tariffs charged for food and beverage items for the first twelve months shall be consistent with the Tender and thereafter may be increased with Approval by no more than the RPI year on year (Series Identifier CZBH).
    2. Prices should be consistent with the Tender Pricing Strategy, unless otherwise Approved by TRP.
    3. TRP may consider price increases above RPI provided that the Concession Holder continues to offer a wide range of high quality products offering excellent value for money.
    4. All proposed changes in the tariff must be notified in writing to TRP at least ten (10) Working Days prior to the proposed introduction of the revised tariff except where responding to an immediate change in Excise Duty or Value Added Tax.
    5. The parties do not intend the provisions of this clause B.10 to infringe any UK or European competition law. However, if any part of this clause B.10 is found by any regulatory authority or court of competent jurisdiction to so infringe, then the parties undertake to immediately cease to operate in accordance with such infringing provision and to commence negotiations in good faith to substitute a new non-infringing provision that meets the commercial objectives of the parties as closely as possible. If no such arrangement can be reached within three months of any finding of infringement, then the infringing part of this clause B.10 shall be deemed to be deleted from this Contract.
    6. The Concession Holder shall give the following discounts which shall count as non- commissionable sales:
       1. 40% discount off the tariffs charged at the Facilities (excluding sale of alcohol) for members of staff employed by TRP; and
       2. 10% discount off the tariffs charged at the Facilities (excluding sale of alcohol) to all card carrying Friends and Volunteers.

## B.11 Provision and Removal of Equipment

* + 1. The Concession Holder shall provide all the Equipment and ancillary materials necessary for the supply of the Services at its own expense including (without limitation): kitchen utensils, crockery, cutlery, glassware, service ware, decorative features, trolleys, staff uniform, cleaning materials, disposables, linen and laundry services and safety equipment (except for fire fighting equipment)
    2. The Concession Holder shall not install any Equipment nor begin any work on the Premises without obtaining Approval and Approval shall also be obtained to the design and style of Equipment.
    3. All Equipment brought onto the Facilities shall be at the Concession Holder’s own risk and TRP shall have no liability for any loss of or damage to any Equipment unless the Concession Holder is able to demonstrate that such loss or damage was caused or contributed to as a result of a Default by TRP. The Concession Holder shall provide for the delivery and removal of Equipment to and from the Facilities at its sole cost, including upon the expiry or earlier termination of the Contract.
    4. Unless otherwise agreed, Equipment brought onto the Facilities will remain the property of the Concession Holder during the Contract Period and the Equipment Register, including date and acquisition price will be maintained and updated quarterly by the Concession Holder and provided to TRP upon request.
    5. The Concession Holder shall maintain all items of Equipment within the Facilities in a safe, serviceable and clean condition.
    6. The Concession Holder shall, at TRP’s written request, at its own expense and as soon as reasonably practicable:
       1. remove from the Facilities any Equipment which in the reasonable opinion of TRP is either hazardous, noxious or not in accordance with the Contract; and
       2. replace such item with a suitable substitute item of Equipment.
    7. The Concession Holder is solely responsible for making good any damage to the Facilities or any objects contained thereon, which is caused by the Concession Holder.

## B.12 Mobiles

* + 1. During the Contract Period TRP shall grant the Concession Holder a non-exclusive licence (subject to all necessary rights of access whether arising expressly or by implication pursuant to the terms of this Contract) to retain the Mobiles although TRP may require that the position of the Mobiles is changed from time to time.
    2. All Mobiles shall be used within the Park at the Concession Holder’s own risk and TRP shall have no liability for any loss of or damage to any Mobiles unless the Concession Holder is able to demonstrate that such loss or damage was caused or contributed to as a result of a Default by TRP.
    3. The Concession Holder shall provide for the delivery or removal of Mobiles to and from the Park at its sole cost including upon the expiry or earlier termination of the Contract.
    4. The Concession Holder shall maintain the Mobiles in a safe serviceable and clean condition and in the event that the Mobiles are deemed to be hazardous noxious or dangerous then they shall be removed and replaced with a suitable substitute on request by TRP.
    5. The parties agree that there is no intention on the part of TRP to create a tenancy of any nature whatsoever in favour of the Concession Holder in respect of the land on which any Mobiles are situated and that no such tenancy has or shall come into being and notwithstanding any rights granted pursuant to the Contract TRP retains the right at any time to use any land owned or occupied by it in any manner it sees fit.
    6. The design style and logo of the Mobiles shall be subject to prior Approval before use within the Park is commenced.

## MONITORING

## C.1 Monitoring Progress Reports and Provision of Data

* + 1. The Concession Holder shall comply with the monitoring arrangements set out in the Monitoring Schedule annexed hereto including, but not limited to, providing such data and information as the Concession Holder may be required to produce under the Contract
    2. Where progress reports are required to be submitted under the Contract, the Concession Holder shall render those reports at such time and in such form as may be specified or as otherwise agreed between the Parties
    3. The submission and receipt of progress reports shall not prejudice the rights of either Party under the Contract.

## 

## C.2 Computer-Readable Output

* + 1. On request, output data must be supplied in computer readable form which is compatible with the use to which the data will be applied by TRP.
    2. Before the data is prepared, the Concession Holder must agree with TRP the file format and media to be used and the data structure required.
    3. The Concession Holder must bear all the costs for preparing the data in the agreed format, on the agreed media and in the required structure.
    4. Proposals to submit compressed data must also be agreed in advance with TRP.

## MARKETING AND COMMUNICATIONS

* + 1. Save for any agreed communications plan the Concession Holder shall not make any public, advertising/publicity, website or media comment, statement or reference, (either reactive or proactive) via social, online, broadcast or print channels, relating to this Contract or the facilities or publicise this Contract or the facilities or any part thereof in any way, except with the Approval of TRP.
    2. The Concession Holder will not display within the Park any materials (including sponsorship materials) branding signage or promotions of any product or service otherwise than with the Approval of TRP.
    3. The form, presentation and content of all press, marketing and communications activity must meet TRP Brand User Guidelines and be Approved in advance of production. This Approval shall include, but not be limited to the:
       1. name, logo and brand developed for Serpentine Kitchen and the Mobiles;
       2. use of the Hyde Park name;
       3. use of TRP name, logo and brand;
       4. appropriateness of press and marketing channels in relation to TRP’s own brand or relationships;
       5. accuracy of representation for venues and services offered; and
       6. quality of content and representation.
    4. The Concession Holder will be expected to market its operation in a pro-active manner in order to operate at the highest level of capacity throughout the year thus maximising revenue
    5. The Concession Holder agrees to display TRP website link on its own website
    6. The Concession Holder agrees to co-operate and participate where reasonable in TRP charitable fundraising initiatives
    7. TRP will promote the catering outlets through in-park signage and on social and digital media channels.
    8. The Concession Holder will be responsible at its own expense for any press and marketing, including but not limited to news, leisure and trade press activity, print and e- brochure production, mailings, advertisements, promotions, web site creation and maintenance etc.
    9. All advertising and promotional material as well as menus, bills and receipts should convey that a proportion of income generated from the catering operations goes back into maintaining the eight Royal Parks. The wording is to be Approved by TRP.
    10. The Concession Holder shall produce a Communications and Marketing plan by 31st December each year detailing the proposed marketing activity by location and spend for the period April to March of the following year.

## VEHICULAR ACCESS

* + 1. The Concession Holder shall comply with all reasonable instructions, notices and directions issued by TRP from time to time in relation to any vehicle and shall comply with the Deliveries and Storage Conditions set out in the Specification Schedule.
    2. The Concession Holder shall ensure that all vehicles belonging to the Concession Holder or delivery vehicles:
       1. display a vehicle permit (obtainable from the relevant Park Office);
       2. enter and leave the Park through routes reasonably designated by TRP;
       3. park only in locations reasonably designated by TRP;
       4. give right of way to pedestrians, cyclists, horses and other animals;
       5. are only driven by people who hold a valid driving licence and have had appropriate training for that vehicle;
       6. are not left unattended and do not block road corners, pedestrian footpaths, cycle paths, horse rides or access to business or residential premises within the Park;
       7. observe the speed limit on roads and a speed limit of 5mph on footpaths;
       8. use a banksman when reversing;
       9. carry such identification within the Park as TRP acting reasonably specifies;
       10. are not allowed to drive on the grass or other soft surfaces and are prohibited from mounting any kerb or pavement and whenever necessary the Concession Holder shall protect any kerbs or footway within the Park; and
       11. only enter the Park during Park Opening Hours except in case of emergency or by prior agreement with TRP.

## SECURITY, WASTE MANAGEMENT, WILDLIFE AND SIGNAGE

## F.1 Security

* + 1. The Concession Holder shall take all measures necessary to comply with the provisions of any enactment relating to security which may be applicable to the Concession Holder in the performance of the Services and shall comply with all requirements of The Royal Parks’ Police.
    2. The Concession Holder shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that Staff have notice that all provisions referred to in clause [F.1.1](#_bookmark7) will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.
    3. Whilst within the Park, Staff shall comply with all security measures implemented by TRP in respect of Staff and other persons within the Park.
    4. TRP shall have the right to carry out any search of Staff or of vehicles used by the Concession Holder within the Park.
    5. The Concession Holder shall co-operate with any investigation relating to security which is carried out by TRP or by any person who is responsible to TRP for security matters and when required by the TRP Representative:
       1. shall use his best endeavours to make any Staff identified by the TRP Representative available to be interviewed by the TRP Representative, or by a person who is responsible to TRP for security matters, for the purposes of the investigation.
       2. Staff shall have the right to be accompanied by a representative appointed by the Concession Holder for the purposes of the investigation and to be advised or represented by any other person whose attendance at the interviews is acceptable to both the TRP Representative and the Contract Manager; and
       3. shall, subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by TRP or by a person who is responsible to TRP for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Concession Holder from performing the Services.
    6. TRP shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Concession Holder with a copy of any material retained.
    7. The Concession Holder will ensure the adequate security of the Facilities and everything contained within the Facilities and shall be responsible for the safe and secure custody of any cash or goods held by it on the Facilities in compliance with its insurance liabilities. If the Concession Holder uses an external agency for cash collection/banking then TRP must approve the agency and its proposed collection times and route.

## F.2 Waste management

* + 1. The Concession Holder shall take all reasonable precautions in the performance of this Contract to ensure that the impact of litter emanating from the Facilities is minimised and such precautions will include the selection of packaging which minimises litter and the levying of deposits on returnable items.
    2. The sale of food and beverage items in polystyrene cups or containers is not permitted.
    3. The Facilities must remain substantially free of litter at all times and the Concession Holder will use all reasonable endeavours to maintain the Facilities to Grade A in accordance with the Code of Practice on Litter and Refuse (issued under the Environmental Protection Act 1990 and referred to in this Condition as “COPLR”).
    4. The Concession Holder shall arrange for the on-going removal of all litter and rubbish from the Facilities to the satisfaction of TRP and using TRP’s waste collection contractor to reduce vehicle movements in the Park and in line with other park waste removal times.
    5. The Concession Holder will be responsible for the supply of litter bins within the Facilities including litter bins in any external seating areas in the same design as those installed by TRP. Bins should be emptied at regular intervals and not allowed to become full.
    6. The Concession Holder will be expected to establish a scheme to separate and collect specific items (e.g. cans and bottles) for recycling in co-operation with any local authority and shall participate in any scheme that TRP sets up for the recycling of waste relevant to the Park. Recycling should be a minimum of 40% of total waste.
    7. A storage tank must be provided inside the Premises for the collection of all waste fluids

e.g. cooking oils and fats, which shall be separately disposed of by the Concession Holder with due regard to the environment and legislation, current and as amended.

* + 1. The Concession Holder shall be responsible for the safe and hygienic temporary storage of all refuse in the kitchen areas, which is to be sealed into polythene sacks until it can be transferred to the collection point by the Concession Holder’s staff.
    2. The Concession Holder shall be responsible for the cleanliness and maintenance of the refuse storage equipment and areas used in connection with the provision of the Services.
    3. If the Concession Holder fails to comply with its obligations under clause [F.2.4](#_bookmark8) TRP may arrange for the removal of all litter and rubbish from the Facilities and recover the full cost of doing so from the Concession Holder.

## Pest Control

* + 1. The control of vermin is of paramount importance to TRP and it is essential that the Concession Holder adopts a proactive approach to pest control, implements very high standards of hygiene and that any infestation is dealt with immediately.
    2. The Concession Holder shall take all reasonable precautions in the performance of this Contract to ensure that the risk of pest infestation shall be minimised by adequate arrangements for the disposal of food waste and other matters attractive to pests.
    3. Any external tables shall be cleared within three minutes of the customer finishing to avoid birds feeding on plate waste.
    4. The Concession Holder shall be responsible for the control of any pests within the Facilities and the costs of control but the use of any pesticides or other chemicals and the method of application by the Concession Holder must first be Approved by the TRP Representative.
    5. Copies of the pest control contractor inspection reports shall be supplied to TRP and the Concession Holder shall be responsible for acting on any recommendations. If the recommendations are not followed and the presence of pests remains, increases or impacts on other areas of the Park, TRP may arrange remedial pest control measures and recover the full cost of these from the Concession Holder.

## F.4 Wildlife

F.4.1 The Concession Holder shall not at any time assume any responsibility for feeding the wildlife and shall not interfere with any bird animal or other form of wildlife.

## F.5 Signage

* + 1. The Concession Holder shall ensure that all areas are marked with clear and correct signage to meet customer, TRP and statutory requirements. Signage will be subject to any required planning permission and to Approval by TRP in line with their signage and design policies.
    2. The Concession Holder shall be responsible at its own expense for the provision, maintenance and repair of internal and external signage in the Facilities. The text and artwork for all such signage shall be subject to Approval by TRP prior to production.

## THE PREMISES

G.1 Licence to occupy Premises

* + 1. During the Contract Period the Concession Holder shall be granted a non-exclusive License (subject to all necessary rights of access whether arising expressly or by implication pursuant to the terms of this Contract) to the use of the Premises.
    2. At all times the structure and envelope of any buildings situated within the Premises shall remain the property of TRP and at no time shall it vest in the Concession Holder.
    3. Such Licence shall be personal to the Concession Holder and it shall subsist during the currency of this Contract only and shall automatically be withdrawn in the event that this Contract is terminated for whatever reasons.
    4. The Concession Holder will change neither the locks or the alarm codes to the Premises without:
       1. Approval of TRP; and
       2. the Concession Holder first providing a new set of keys to TRP or advising TRP of the change in the alarm codes.
    5. TRP and any person authorised by TRP shall have access in on or over the Premises and which shall not be impeded in any way in order to:
       1. manage maintain or inspect the Park and
       2. inspect the Premises including the Property the Depreciating Property, the Equipment and any facility or material thereon
    6. The Concession Holder shall not use the Facilities for any purpose or activity other than for the provision of the Services.
    7. Pursuant to the terms of the preceding clause [G.1.6](#_bookmark10) the Concession Holder shall not hold any functions or other events at the Premises without Approval and where Approval is given to a function or event at the Premises it shall at all times be subject to a requirement that suitable street lighting shall be provided by the Concession Holder to a standard that is acceptable to TRP where this is for an evening event.
    8. No alteration or buildings works will be permitted to or on the Premises without submitting detailed plans to TRP and obtaining Approval and all alterations which are Approved must be carried out in accordance with the reasonable conditions and requirements which are imposed by TRP and which may, if TRP so requires, be recorded in a written agreement between the parties and the costs of both parties incurred in negotiating and entering into such agreement will be paid by the Concession Holder.
    9. The Concession Holder must not carry out or permit or suffer to be carried out any building or other works which may cause damage to any Park wall within or adjacent to the Premises and must make good any damage caused to the entire satisfaction of TRP.
    10. The Concession Holder must not give permission for any encroachments to be made nor to permit any easement to be acquired against or upon the Premises and in case any such shall be attempted to be made or acquired to give immediate notice thereof to TRP and at the request of TRP to adopt such means as may be reasonably required or deemed proper for preventing the making of such encroachment or the acquisition of such easement
    11. The parties agree that there is no intention on the part of TRP to create a tenancy of any nature whatsoever in favour of the Concession Holder and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contact, TRP retains the right at any time to use any Premises owned or occupied by it in any manner it sees fit.
    12. The Concession Holder will notify TRP of any rating assessment that might be received by the Concession Holder within 5 Working Days of notification. For the avoidance of doubt TRP shall be responsible for payment of business rates ( if any) relating to the Facilities.
    13. The Concession Holder shall:
        1. Not invite nor permit any members of the public to be present on the Facilities at any time when the Facilities are not open to the public.
        2. Not permit sleeping at the Facilities overnight.
        3. Ensure that there are no pyrotechnics near the Facilities unless approved by TRP in its absolute discretion.
        4. Obtain all licences planning permissions and other consents necessary for the provision of the Services at the Facilities, including a Premises Licence.
        5. Ensure that no noise from the Facilities causes a nuisance to any nearby residents or occupiers of any buildings on the perimeter of the Park.
        6. Not permit any barbeques save for within the boundary of the Premises and subject to Approval.

## Cleaning of the Internal Areas of the Premises

* + 1. The Concession Holder shall at all times keep the Internal Areas of the Premises in a clean and tidy condition to the satisfaction of TRP and at its own cost.
    2. Upon appointment, the Concession Holder shall produce a cleaning specification and schedule for each area under its control and distribute a copy to TRP for Approval and for future auditing purposes.
    3. At least twice per annum the Concession Holder will engage the services of a specialist sub-contractor to conduct a hygienic deep clean of the kitchen and associated areas and the Concession Holder shall meet the costs thereof and shall provide relevant documentation to confirm that such deep clean has taken place.
    4. The areas to be regularly and deep cleaned shall include but not be limited to the following:
       1. walls, floors, ceilings and floor coverings
       2. All Equipment Property and Depreciating Property
       3. All pipe-work and conduits
       4. drains and gullies
       5. foodservice ventilation and extraction system
       6. ducts and voids
       7. shelving, racking and trolleys
       8. light fittings
       9. waste disposal areas
       10. staff restroom fixtures and sanitary fittings
       11. any other toilet facilities
    5. The areas to be cleaned regularly by the Concession Holder shall include but not be limited to the following:
       1. windows and doors;
       2. tables and chairs and other ancillary fittings and fixtures;
       3. office fixtures and fittings; and
       4. any litter collection areas and refuse storage areas.
    6. If the Concession Holder fails to observe its obligations under clauses [G.2.4](#_bookmark13) and [G.2.5,](#_bookmark14) TRP reserves the right to carry out the works and to charge the Concession Holder for the full cost of such works.
    7. The Concession Holder shall provide all cleaning materials, equipment and labour required.
    8. The Concession Holder is responsible for maintaining any external areas that may form part of the Facilities for which the Concession Holder may be responsible in a clean and tidy manner and consistent with a Grade I listed landscape. The Concession Holder shall be responsible for arranging and paying for internal and external window cleaning of the Premises.

## G.3 Supply and Maintenance of Property

* + 1. Where TRP issues Property free of charge to the Concession Holder such Property shall be and remain the property of TRP and the Concession Holder irrevocably licences TRP and its agents to enter upon any premises including Off Site Production Premises during normal business hours on reasonable notice to recover any such Property. The Concession Holder shall not in any circumstances have a lien or any other interest on the Property and the Concession Holder shall at all times possess the Property as fiduciary agent and bailee of TRP. The Concession Holder shall take all reasonable steps to ensure that the title of TRP to the Property and the exclusion of any such lien or other interest are brought to the notice of all persons and shall, at TRP’s request, ensure that it is clearly identifiable as belonging to TRP.
    2. The Property shall be deemed to be in good visible and working condition when received by or on behalf of the Concession Holder unless the Concession Holder notifies TRP otherwise within 5 Working Days of receipt or where the terms of clause [G.3.4](#_bookmark16) may apply.
    3. The Concession Holder shall be responsible, at its own cost, for maintenance to the manufacturer’s specifications of the Property on the Property Schedule. A pro-active approach to maintenance issues will be encouraged to prevent undue deterioration.
    4. If the Parties agree that any Property is beyond economic repair and requires replacement the Concession Holder will purchase a replacement equivalent item at its own cost subject to obtaining Approval.
    5. The Concession Holder shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
    6. The Concession Holder shall ensure the security of the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with TRP’ reasonable security requirements as required from time to time.
    7. The Concession Holder shall be liable for all loss of, or damage to, the Property (excluding reasonable fair wear and tear), unless such loss or damage was caused as a result of a Default by TRP.
    8. The Concession Holder shall inform TRP within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.
    9. The Concession Holder shall not dispose of any Property or Depreciating Property without Approval.
    10. Any Depreciating Property purchased as a result of the Capital Investment Project must be added to the Property Schedule within one month of commencement of trading or acquisition of the Depreciating Property.
    11. The Property Schedule shall include details of the make, model, serial number, description and photographs of the Property and the Depreciating Property.
    12. The Concession Holder shall update the Property Schedule on a quarterly basis, listing additional Property acquired and Property disposed of to ensure that the Property Schedule is accurate and up to date, and make this available to TRP on request.
    13. On termination of the contract, all items on the Property Schedule shall be left at the Premises in a safe serviceable and clean condition.

## Inspection of Premises

G.4.1 Save as TRP may otherwise direct, the Concession Holder is deemed to have inspected the Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

## G.5 Planned Maintenance Programme

* + 1. TRP will prior to the Commencement Date or within 6 months thereafter carry out the Identified Works to the Premises
    2. Following the completion of the Identified Works by TRP in accordance with clause G.5.1 the Concession Holder shall be required to keep the Internal Areas of the Premises in the same standard of repair as at the date of completion of the Identified Works by implementing the Planned Maintenance Programme in accordance with clause G.5.3.
    3. The repair of the Internal Areas of the Premises and the maintenance and cleaning of the External Areas of the Premises shall be carried out in accordance with the Planned Maintenance Programme, either:
       1. by the Concession Holder at its own cost; or
       2. subject to agreement between the parties by TRP’ contractors on the basis that the costs incurred will be reimbursed by the Concession Holder.
    4. The Planned Maintenance Programme will be provided to the Concession Holder on or before the Commencement Date and any changes to the Planned Maintenance Programme proposed by the Concession Holder must first be approved by TRP.
    5. Within 3 months of the Commencement Date the Concession Holder must submit a Maintenance Plan which identifies the timetable for planned reactive and future upkeep and maintenance in accordance with the Planned Maintenance Programme which shall include ( without limitation) the following:
       1. all Internal Areas of the Premises, including in good decorative order;
       2. the signs on the boundary fencing on the Premises which have been installed with the consent of TRP;
       3. all safety equipment throughout the Premises (including life saving equipment fire detection and security equipment) and the statutory testing and maintenance thereof;
       4. proposals for maintenance and cleaning of the External Areas of the Premises for which the Concession Holder may be responsible (including the keeping of all entrances and pathways clear of leaves detritus snow and ice) and
       5. the windows and doors of the Premises
       6. services to the Premises on the Concession Holder’s side of the meter points
       7. non structural maintenance of the drains including regular cleaning and rodding
       8. all mechanical and electrical plant and equipment existing in and serving the Premises (including any heating or air conditioning appliances serving the Premises)
    6. The Maintenance Plan shall be updated monthly by the Concession Holder to record any planned preventative maintenance work or repairs undertaken, how, when and why and itemising any impact such maintenance or repair had on the business and a copy of the plan shall be provided to TRP on request.
    7. If TRP consider the Premises to be in an unsatisfactory state of repair or condition pursuant to the terms of this Contract or the Concession Holder has failed to carry out or implement the agreed Planned Maintenance Programme then TRP may issue a notice requiring immediate corrective and/or restorative action to facilitate the placing and keeping of the Premises into a satisfactory state of repair or condition or to enable the agreed Planned Maintenance Programme to be carried out.
    8. Where the Concession Holder receives notice or is placed on notice under this Condition that it is failing to carry out works in accordance with this Contract then the Concession Holder must:
       1. undertake at its cost to complete the outstanding works and any required maintenance within the time specified in the notice, and which for such purposes includes any deemed date of notice arising in those circumstances where the Concession Holder becomes aware of the failure or is placed on notice of the same;
       2. pay to TRP all reasonable costs incurred by them in carrying out a complete audit of all other installations in the Premises in which it is discovered that any other part of the Planned Maintenance Programme of works have not been carried out or properly carried out;
       3. pay to TRP all reasonable costs incurred by them in checking installations similar to those in which part of the maintenance work repair work or other work has not been carried out or properly carried out in other buildings for which the Concession Holder has a responsibility for maintenance and repair under this Contract;
       4. pay to TRP all reasonable costs incurred by them in subsequently checking the subsequent maintenance work on the installation for which part of the work had not been carried out or properly carried out; and
       5. pay to TRP any other reasonable costs which they may incur as a consequence of the failure of the Concession Holder to carry out or properly carry out any part of the maintenance work repair work or other work and the checking and self- certification procedures.
    9. If the Concession Holder fails to execute repairs (including decorative repairs) for which it is responsible under the Contract then TRP Representative (subject to reasonable notice) may arrange for the execution of the required repairs at any time and TRP may recover the full cost of doing so from the Concession Holder.
    10. The Concession Holder will notify TRP immediately of any disrepair or damage to any parts of the Premises which are not the responsibility of the Concession Holder under the terms of this Contract.
    11. The Concession Holder is solely responsible for making good any damages to the Premises or any objects thereon which is caused by the Concession Holder.

## Utilities

* + 1. The Concession Holder shall be responsible for the supply metering and payment of all utilities and utility services or supplies to and from the Facilities (including water electricity gas waste removal and telephone charges).
    2. The Concession Holder shall be responsible for ensuring the delivery of all such utilities and utility services or supplies to and from the Facilities except where such utilities and utility services or supplies services are in the ownership of TRP.
    3. Where possible the Concession Holder shall arrange to be billed directly by the relevant undertakers for their use of any utility services or supplies and where not possible the cost will be assessed by check meter and recharged by TRP to the Concession Holder. TRP shall not grant to any other person access to the utility services or supplies for which the Concession Holder is responsible.
    4. TRP will not be liable for loss of revenue or food products where any utility service or supply fails except where such utilities and utility services or supplies are in the ownership of TRP and it is directly attributable to the failure of TRP to maintain the service or supply.
    5. The Concession Holder shall be responsible for ensuring the Facilities meet the Electricity at Work Regulations 1989 and that an annual certificate is issued by a recognised undertaking to confirm the Facilities’ compliance.
    6. The Concession Holder shall not alter any gas electric or water services nor install any new fixed plant involving water fuel or power services without Approval.
    7. The Concession Holder shall contract directly with a service provider for the supply lines for external calls and data cabling for the operation of the telephone, computer systems, EPOS systems and card charging facilities. The Concession Holder shall be responsible for all costs associated with installation, use and maintenance of the services.
    8. The Concession Holder shall be responsible for supplying the necessary computer and EPOS systems required to manage the business, and these shall be treated as a company expenditure item and shall not be included in the Capital Investment Project.

## G.7 Office Accommodation

G.7.1 The Concession Holder shall be responsible for supplying all furniture and office equipment including but not limited to computers, internet access, facsimile machines and telephone handsets.

## G.8 Right of Access to the Facilities

G.8.1 Where access to the Facilities is not given to the Concession Holder and this affects their ability to perform the Services, the Concession Holder shall notify TRP Representative immediately.

## G.9 Off Site Production Premises

G.9.1 In the event that the Concession Holder uses Off Site Production Premises for the preparation of food it will ensure that the Offsite Production Premises comply with all legislative requirements and are cleaned to the standards set out in clause [G.2](#_bookmark12) and TRP will be entitled to carry out unannounced inspections to determine whether the Concession Holder has complied with this obligation. Capital investment costs incurred at the Off Site Production Premises and transportation may not be offset against income in the management accounts for this Contract.

## G.10 Capital Investment Project

* + 1. The Concession Holder will implement the Capital Investment Project in accordance with the terms of the Capital Investment Project Schedule (and subject also to compliance with clause [G.1.8](#_bookmark11)) to the reasonable satisfaction of TRP.
    2. If the Actual Capital Expenditure incurred by the Concession Holder is less than the Capital Investment Sum the Concession Holder will pay the amount of any difference to TRP within 10 working days of (*date specified in the Capital Investment Project Schedule*) unless TRP agrees to any alternative arrangement in its absolute discretion.

## PREMISES LICENCE

* + 1. The Concession Holder shall at all times during the Contract Period fully comply with the terms of the Premises Licence and must not apply for any variation to the Premises Licence without Approval.
    2. The Concession Holder must pay all fees in respect of any application or notice under the Licensing Act 2003 Part 3 and all annual fees in respect of the Premises Licence.
    3. On the termination of the Contract Period or as required by TRP to preserve the Premises License the Concession Holder must at their own expense consent to the transfer of the Premises Licence.
    4. The Concession Holder must indemnify the TRP and keep it indemnified in respect of any loss damage or expense suffered by TRP as a result of:
       1. the commission of any offence by the Concession Holder under the Licensing Act 2003
       2. any failure by the Concession Holder to comply with the conditions to which the Premises Licence is subject; or
       3. any steps taken on determination of any application for review of the Premises Licence consequent upon any act or omission by the Concession Holder or the designated premises supervisor as defined in the Licensing Act 2003.

## ACCOUNTING AND CONTRACT PRICE PAYMENTS

**H.1 Definition of Net Sales**

* + 1. Net Sales are defined as all receipts relating to the provision of Services by the Concession Holder in fulfilling its obligations under this Contract and is net only of Value Added Tax.
    2. Net Sales shall encompass payments:
       1. by cash, cheque, credit or charge card, account or any other approved form;
       2. made prior to, at the time of, or subsequent to the sale.
    3. The following are not to be deducted from Net Sales and are to be treated by the Concession Holder as expenditure items:
       1. bad debts;
       2. any monetary losses whether through fraud, theft or negligence and shortages of cash takings against till readings, with the exception of voids, which must be authorised by the Contract Manager with the reason indicated on the audit roll; and or
       3. refunds or replacement meals to dissatisfied customers credit and charge card commission
    4. The Concession Holder shall provide facilities for customers to pay by credit or debit card or such other electronic and other payment methods that may be developed and become customary in retail outlets. The Concession Holder shall be the registered merchant in respect of credit/charge card transactions and shall be responsible for all commissions payable to/charges levied by the credit/charge company. These sales (prior to the deduction of the commission charges) will be included within the declared gross turnover figures used for the purpose of calculating the commission payments due in accordance with the Commission Pricing Schedule.
    5. The Concession Holder shall be responsible for the invoicing and collection of payment from all users of the Services and shall provide a till receipt at point of sale.

## H.2 Commission Terms

* + 1. The Concession Holder shall pay to TRP a commission based on the Net Sales in each Financial Year (the Contract Price) and the Concession Holder shall follow the same Financial Year for the purpose of this Contract presenting all financial information in these financial periods.
    2. The Contract Price payable in respect of each Financial Year shall be determined in accordance with the Commission Pricing Schedule and the terms of clause [H.3.](#_bookmark20)
    3. The annual commission set out in the sixth column ("Minimum Annual Commission Payment") is the minimum annual commission payable in each Financial Year and the Concession Holder guarantees to TRP that this sum shall be paid.

## H.3 Payments

Definition of Net Sales

* + 1. The Concession Holder shall pay TRP the Minimum Annual Commission Payment in twelve equal instalments over the applicable Financial Year ("the Minimum Monthly Payment").
    2. The Minimum Monthly Payment shall be:
       1. made whether or not the sales forecast (as set out in the Commission Pricing Schedule) for the relevant Financial Year has been met and
       2. paid by standing order monthly in arrears on 30th day of each calendar month of the Contract Period.
    3. Not later than 7 days after the end of each calendar month the Concession Holder shall provide to TRP the information required in accordance with clause [H.1](#_bookmark18) for the calculation of the Net Sales and such other information as TRP reasonably requests.
    4. TRP shall then submit an invoice for the amount (if any) by which the Contract Price due from the Concession Holder to TRP exceeds the Minimum Monthly Payment paid by the Concession Holder in respect of the same period.
    5. Where the Concession Holder receives the invoice before the fifteenth day of a calendar month then the Concession Holder shall settle any such invoice within 20 Working Days of the date of the invoice; but otherwise the Concession Holder shall settle such invoice before the end of the following calendar month.
    6. All fees, rents, commissions and service charges are quoted as a VAT exclusive rate and where applicable VAT will be charged to and paid by the Concession Holder at the current rate.
    7. All payments due shall be paid to the following account:

Bank: Royal Bank of Scotland

Account name: The Royal Parks Ltd

Sort Code: 60-16-39

Account Number: 83410554

* + 1. Any remaining sums due under this Contract shall be paid by the Concession Holder by direct transfer to the same account.
    2. Within 20 Working Days of the end of each Financial Year the Concession Holder shall submit to TRP a statement setting out the total Net Sales for such Financial Year and the total commission paid to TRP during such Financial Year, broken down by catering outlet.
    3. In the event that the actual commission paid by the Concession Holder in respect of such Financial Year exceeds both: (a) as a percentage, the percentage commission due for such Financial Year; and (b) the Minimum Annual Commission Payment, TRP will, within 20 Working Days of receipt of such statement make a reconciling payment to the Concession Holder equal to the excess commission paid (ie the actual commission paid less the commission properly due, having applied the relevant commission percentage).
    4. In the event that the actual commission paid by the Concession Holder in respect of such Financial Year is less than: (a) as a percentage, the percentage commission due for such Financial Year; and (b) the Minimum Annual Commission Payment, the Concession Holder will, within 20 Working Days of receipt of such statement make a reconciling payment to TRP equal to the underpaid commission (i.e. the commission properly due less the actual commission paid, having applied the relevant commission percentage).
    5. For the avoidance of doubt, the Net Sales on which the Contract Price is payable by the Concession Holder to TRP under this Contract shall not include any revenues earned by the Concession Holder from sales made at a discounted concession rate provided that these have been agreed in writing by TRP in advance.
    6. If any monies due to TRP under this Contract remain unpaid by the Concession Holder after the due date for payment, then the Concession Holder shall pay interest on the outstanding sums.
    7. The interest will be calculated at a rate equivalent to the rate of 4% per annum above the base rate of the Bank of England from time to time in force on the amount outstanding of such sums from the date on which the same becomes payable until the actual date of payment.
    8. The Parties acknowledge that this constitutes a substantial remedy and that TRP may not claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## Maintenance of Accounting Records

* + 1. The Concession Holder shall keep detailed books and records of the operation of the Services for the purpose of verifying Net Sales and the additional information to be provided to TRP pursuant to clause [H.3.3,](#_bookmark21) such books and records to include the information referred to in clause [H.5](#_bookmark23) (Right of Audit).
    2. The Concession Holder shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract for the purpose of verifying Net Sales.
    3. For the purpose of verifying Net Sales accounts shall be provided in electronic form compatible with TRP’s software, as well as in hard copy (“the Records”) and the Concession Holder must comply with the provisions of C2.
    4. The Concession Holder shall make arrangements for the purpose of verifying Net Sales for accounts to be audited within two months after the end of every Financial Year by a registered auditor and which shall be certified to the effect that the registered auditor has either prepared or audited accounts on the basis of original till rolls or receipts, duplicate bills or invoices given to customers or from other original material recording sales at the Facilities.
    5. TRP shall have the right upon reasonable notice and at any time during reasonable business hours during the Contract Period and for a period of up to 6 years thereafter to enter any business premises of the Concession Holder where records are kept and to examine such records (and supporting documents) and to make copies thereof.

## H.5 Right of Audit

* + 1. TRP reserves the right to undertake at any time by its personnel, its appointed auditors or internal auditors an audit inspection of such accounts and prime documentation as required to verify any figures declared in respect of Net Sales. The auditing team shall have access to all necessary documentation both at the Facilities and at any other business premises of the Concession Holder for the purpose of verifying Net Sales.
    2. The following documents shall be retained as part of the requisite audit trail to which TRP and its agents shall have free access:

Security collection receipts/records Cash records

Credit sales records Banking receipts

Cash register audit rolls and Z readings

Value added tax returns to HM Revenue and Customs (input and output tax) Customer invoices

## H.6 Taxation, National Insurance and Employment Liability

* + 1. The Parties acknowledge and agree that this Contract constitutes a contract for the provision of Services and not a contract of employment.
    2. The Concession Holder shall at all times indemnify TRP and keep TRP indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby TRP is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue and Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of this Contract.

## H.7 Recovery of Sums Due

* + 1. Wherever under the Contract any sum of money is recoverable from or payable by the Concession Holder (including any sum which the Concession Holder is liable to pay to TRP in respect of any breach of the Contract), TRP may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Concession Holder under the Contract or under any other agreement or contract with TRP.
    2. Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
    3. The Concession Holder shall make all payments due to TRP without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Concession Holder has a valid court order requiring an amount equal to such deduction to be paid by TRP to the Concession Holder.
    4. All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## H.8 Price adjustment on extension of the Initial Contract Period

* + 1. In the event that TRP wishes to consider the extension of the Initial Contract Period pursuant to clause [K.6](#_bookmark53) (Extension of Initial Contract Period) TRP may (without any liability to agree an extension) not later than 15 months prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Concession Holder (for a period of not more than 60 Working Days) to agree a variation in the Contract Price.
    2. If the Parties are unable to agree a variation in the Contract Price in accordance with clause [H.8.1,](#_bookmark26) the Contract shall terminate at the end of the Initial Contract Period.
    3. If a variation in the Contract Price is agreed between TRP and the Concession Holder, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.

## H.9 Legislative Change

* + 1. The Concession Holder shall bear the costs of ensuing that the Services shall comply with all applicable statutes, enactments, orders, regulations or other similar instruments and any amendments thereto.
    2. In the event that the Concession Holder is required to bear costs pursuant to clause

[H.9.1](#_bookmark27) as a result of amendments to statutes and enactments, orders, regulations or other similar instruments which were not reasonably foreseeable at the date hereof and where such costs would have a significant impact on the Concession Holder’s business the parties will negotiate in good faith to agree such amendments and adjustments to the Contract Price as would be fair and equitable in the circumstances.

## H.10 VAT

H.10.1 The Concession Holder shall be responsible for accounting to HM Revenue and Customs for all Value Added Tax which the Concession Holder is required by law to charge and which shall be levied at the appropriate rate.

## I STATUTORY OBLIGATIONS AND REGULATIONS

## I.1 Prevention of Corruption

* + 1. The Concession Holder shall not offer or give, or agree to give, to TRP or any other public body or any person employed by or on behalf of TRP or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with TRP or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
    2. The Concession Holder warrants that it has not paid or agreed to pay any fee (other than in respect of the Contract Price) to TRP or any other public body or any person employed by or on behalf of TRP or any other public body by way of inducement in connection with the Tender or the award of this Contract.
    3. If the Concession Holder, its Staff or anyone acting on the Concession Holder’s behalf, engages in conduct prohibited by clauses [I.1](#_bookmark28) or [I.2,](#_bookmark29) TRP may:
       1. terminate the Contract and recover from the Concession Holder the amount of any loss suffered by TRP resulting from the termination, including the cost reasonably incurred by TRP of making other arrangements for the supply of the Services and any additional expenditure incurred by TRP throughout the remainder of the Contract Period; or
       2. recover in full from the Concession Holder any other loss sustained by TRP in consequence of any breach of those clauses whether or not the Contract has been terminated.

## I.2 Prevention of Fraud

* + 1. The Concession Holder shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Concession Holder (including its shareholders, members, directors).
    2. The Concession Holder shall notify TRP immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
    3. If the Concession Holder or its Staff commits Fraud in relation to this or any other contract with the Crown (including TRP) TRP may:
       1. terminate the Contract and recover from the Concession Holder the amount of any loss suffered by TRP resulting from the termination, including the cost reasonably incurred by TRP of making other arrangements for the supply of the Services and any additional expenditure incurred by TRP throughout the remainder of the Contract Period; or
       2. recover in full from the Concession Holder any other loss sustained by TRP in consequence of any breach of this clause.

## I.3 Discrimination

* + 1. The Concession Holder shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Concession Holder shall not unlawfully discriminate within the meaning and scope of the Disability Discrimination Act 1995, the Human Rights Act 1998, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
    2. The Concession Holder shall take all reasonable steps to secure the observance of clause

[I.3.1](#_bookmark30) by all Staff.

## I.4 The Contracts (Rights of Third Parties) Act 1999

I.4.1 A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

## I.5 Environmental Requirements

* + 1. The Concession Holder shall, when working on the Facilities, perform its obligations under the Contract in accordance with TRP Environmental Policy Schedule, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
    2. The Concession Holder shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Services. Without prejudice to the generality of the foregoing, the Concession Holder shall promptly provide all such information regarding the environmental impact of the Services and compliance with this clause [I.5](#_bookmark31) as may reasonably be requested by TRP.
    3. The Concession Holder shall ensure that adequate measures are in force during the Contract Period (and to obtain Approval to the details of such measures) in order to prevent within the Facilities any unapproved alteration in the characteristics of the grass swards therein by the introduction of any unwanted flora or of any foreign seed species into a Park
    4. Where the Concession Holder is required to submit reports to TRP, all of the paper used shall be Elemental Chlorine Free and 100% recycled with a minimum of 80% post- consumer waste, unless otherwise agreed with TRP.
    5. The Concession Holder shall ensure that all timber and timber related products used on the Contract is both legally and sustainably sourced in accordance with the UK Government timber procurement policy (available from TRP on request and from the CPET website) and which without prejudice to the generality of the of the foregoing will require that any timber and wood-derived products supplied or used by the Concession Holder in the performance of this Contract (including all timber and wood-derived products supplied or used by any sub-contractor) shall originate from a forest source where management of the forest has full regard for:
       1. Identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
       2. Mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
       3. Safeguarding the basic labour rights and health and safety of forest workers.
    6. If requested by TRP, the Concession Holder shall provide to TRP evidence that any timber and wood-derived products supplied or used in the performance of this Contract complies with social criteria defined in the preceding clause.
    7. TRP reserves the right at any time during the Contract Period and for a period of 6 years after the end of the Contract Period to require the Concession Holder to produce the evidence required under clause [I.5.6](#_bookmark32) for inspection by TRP within 10 Working Days of a written request by TRP and the Concession Holder shall maintain records of all timber and wood derived products supplied or used in the performance of this Contract for that purpose.
    8. Such information shall be made available to TRP if requested, for a period of 6 years from final delivery under the Contract and for that reason the provisions of clause [I.5.7](#_bookmark33) shall survive the expiry or termination of this Contract for any reason

## 

## I.6 Health and Safety & Food Safety

* + 1. All work undertaken by the Concession Holder in connection with the Services shall be in accordance with all current relevant health and safety and food safety legislation and Good Industry Practice.
    2. The Concession Holder shall comply with Food Hygiene Legislation and implement a Food Safety Management System which applies the principles of the HACCP system and shall make this available to TRP on request.
    3. The Concession Holder shall comply with the requirements of the Health and Safety at Work etc. Act 1974, Fire Regulations and any other acts, orders, regulations and codes of practice relating to health and safety and implement a Health and Safety Management System and shall make this available to TRP on request.
    4. The Concession Holder shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to TRP on request and that a copy of the Concession Holder's risk control systems in respect of the Services shall be available for reference at all times.
    5. The Concession Holder shall undertake a Fire Risk Assessment of each workplace as required by the Regulatory Reform Fire Safety Order (RRFSO) 2005 which shall be made available to TRP on request.
    6. The Concession Holder shall submit not less than annually to TRP copies of all relevant generic risk assessments and all new risk assessments which are particular to this Contract.
    7. As and when the above mentioned risk assessments are periodically reviewed by the Concession Holder then the Concession Holder shall submit revised copies to TRP Representative.
    8. The Concession Holder shall attend the Health and Safety co-ordination meetings as reasonably stipulated by TRP Representative.
    9. The Concession Holder will be expected to implement minimum six monthly independent health and safety and food safety inspections of the Facilities and Services, and to provide TRP with a copy of the report within 10 Working Days of receipt, together with a plan identifying actions to be undertaken and by when.
    10. Should the health and safety or food safety inspection report identify any issues of statutory non-compliance, the Concession Holder is required to address these issues immediately and to notify TRP of the remedial actions taken, as well as plans to ensure future compliance is maintained.
    11. As part of the Contract TRP will conduct health and safety annual inspections and food hygiene inspections. Any breaches will be notified to the Concession Holder and the Concession Holder will be asked to rectify the issues within an agreed and reasonable timeframe.
    12. The Concession Holder is required to forward to TRP any communication following, or as the result of, an inspection by the local authority or the Health and Safety Executive, within 10 Working Days of receipt, or where this is a Statutory Notice, immediately.
    13. The Concession Holder shall submit accident and incident reports (in a form approved by TRP Representative) and in particular shall promptly notify TRP of: -
        1. any health and safety or food safety hazards which may arise in connection with the performance of the Contract
        2. any health and safety or food safety hazards which may exist or arise at the Facilities and which may affect the Concession Holder in the performance of the Contract
        3. any incident or accident (however minor and including illness) occurring in the performance of the Contract on the Facilities where that incident causes any personal injury or damage to property which could give rise to personal injury
        4. all incident investigation reports and control measures put in place to prevent recurrence
        5. all RIDDOR reports made to relevant enforcing authority.
    14. While within the Park the Concession Holder shall comply with any other health and safety measures implemented by TRP in respect of its Staff and other persons working in the Park.
    15. The Concession Holder shall be responsible for providing first aid equipment and competent first aid provision to their own Staff.
    16. The Concession Holder shall have adequate emergency arrangements in place and communicate the emergency procedure to all their Staff
    17. The Concession Holder shall ensure that certificates and inspection or service records for all Equipment, Property and Depreciating Property are made available to TRP during the Contract Period upon request.

## Statutory Requirements and the Facilities

* + 1. At the Concession Holder’s own expense to observe and perform and comply with all Acts of Parliament Local Acts and bye-laws (including all Orders Directions and Regulations made or issued thereunder) and all lawful requirements of all Public Local or other competent authorities and all statutory or other lawfully enforceable notices obligations directions orders and requirements of whatsoever nature in respect of or in any way affecting the Facilities or anything therein or thereon or any activity carried on by the Concession Holder at the Facilities or therein or in respect of persons resorting thereto or working thereat on behalf of the Concession Holder and within the time limited by law or by the notice requiring the same to be done (or if no such time is so limited then within a reasonable time) at the Concession Holder’s expense to carry out all such works and provide and do all such things as by or under statute bye-laws or otherwise however may lawfully be required ordered or directed to be carried out provided or done in respect of the Concession Holder’s performance of the Services or at or in connection with the Facilities or the use and occupation thereof and to carry out provide and do all such matters and things as aforesaid to the reasonable satisfaction of TRP and in accordance with the lawful requirements and directions of any Body or Person or Court of competent jurisdiction lawfully requiring ordering or directing the same.
    2. To produce to TRP Representative any notice relating to the Facilities served on the Concession Holder by any public local or other competent authority under or by virtue of any Statute or Order affecting either the interests of TRP or the Concession Holder in the Facilities within 10 Working Days of the receipt of the same.

## PROTECTION OF INFORMATION

## J.1 Data Protection Act

* + 1. For the purposes of this clause [J.1,](#_bookmark35) the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing shall have the meaning prescribed under the DPA.
    2. The Concession Holder shall (and shall ensure that its entire Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
    3. Notwithstanding the general obligation in clause [J.1.2,](#_bookmark36) where the Concession Holder is processing Personal Data (as defined by the DPA) as a Data Processor for TRP the Concession Holder shall:
       1. Process the Personal Data only in accordance with instructions from TRP (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by TRP;
       2. comply with all applicable laws;
       3. Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Concession Holder’s obligations under this Contract or as is required by Law or any regulatory body;
       4. 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;
       5. take reasonable steps to ensure the reliability of Staff who may have access to the Personal Data;
       6. not cause or permit the Personal Data to be transferred outside of the European Economic Area without Approval;
       7. ensure that all Staff 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 [J.1;](#_bookmark35)
       8. ensure that none of the Staff publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by TRP
       9. not disclose Personal Data to any third parties in any circumstances other than with Approval or in compliance with a legal obligation imposed upon TRP; and
       10. notify TRP (within 5 Working Days) if it receives:
           1. a request from a Data Subject to have access to that person’s Personal Data; or
           2. a complaint or request relating to TRP’ obligations under the DPA.
    4. The provision of this clause [J.1](#_bookmark35) shall apply during the Contract Period and indefinitely after its expiry.
    5. Subject to the requirements of clause [J.1.2](#_bookmark36) (including compliance with any notification requirements under the DPA) the Concession Holder grants to TRP with effect from the date of this Contract a non-exclusive licence to use the customer database which is generated by the Concession Holder in the performance of the Services and such licence shall be non-assignable (except pursuant to clause K1.3), perpetual, royalty fee and irrevocable.

## J.2 Official Secrets Acts 1911 to 1989 & S182 of the Finance Act 1989

* + 1. The Concession Holder undertakes to abide by, and ensure that its Staff abide by the provisions of:
       1. the Official Secrets Acts 1911 to 1989; and
       2. Section 182 of the Finance Act 1989.
    2. In the event that the Concession Holder or its Staff fails to comply with this clause, TRP reserves the right to terminate the Contract by giving notice in writing to the Concession Holder.
    3. The provisions of clause [J.2.1](#_bookmark38) shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

## J.3 Confidential Information

* + 1. Each Party undertakes to the other that it shall:
       1. keep confidential all Confidential Information;
       2. take appropriate steps to safeguard all Confidential Information within its control belonging to the other Party;
       3. not, without the other Party's prior written consent, disclose the Confidential Information in whole or in part to any other person save those of its directors, employees, agents, professional advisers, consultants and subcontractors involved in the implementation of this Contract provided in all cases that they have a need to know the same and provided that in disclosing information under this clause
    2. the Parties shall disclose only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate; and
       1. use the Confidential Information solely in connection with the exercise of rights and/or the performance of obligations under this Contract and not otherwise for its own benefit or the benefit of any third party.
    3. The provisions of clauses [J.3.1](#_bookmark40) shall not apply to the whole or any part of the Confidential Information that can be shown by the receiving Party to be:
       1. disclosed as a requirement of law or any regulatory body to whose rule either Party is subject;
       2. required for the examination and certification of each Party’s accounts by external professional advisors;
       3. known to the receiving Party prior to the date of this Contract otherwise than as a result of being obtained directly or indirectly from the disclosing Party;
       4. obtained from a third party who lawfully possessed such Confidential Information and which has not been obtained in a breach of a duty of confidence owed to the disclosing Party by any reason;
       5. in the public domain other than as a result of a breach of a duty of confidence owed to the disclosing Party by any person;
       6. in the case of TRP, required for any examination by the National Audit Office.
    4. The Concession Holder shall not use any Confidential Information received and belonging to TRP otherwise than for the purposes of this Contract.
    5. At the written request of TRP, the Concession Holder shall procure that those members of Staff identified in the written request sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
    6. Nothing in this clause [J.3](#_bookmark39) shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of the Intellectual Property Rights.
    7. The provisions under this clause [J.3](#_bookmark39) are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
    8. The provisions of this clause [J.3](#_bookmark39) shall survive expiry or termination of this Contract for any reason.

## J.4 Freedom of Information Act 2000 and Environmental Information Regulations

* + 1. The Concession Holder acknowledges that TRP is subject to the requirements of the FOIA and the Environmental Information Regulations (collectively referred to in this clause as the “Disclosure Legislation”).
    2. The Concession Holder shall:
       1. send to TRP any Request for Information received by them addressed to TRP as soon as practicable after receipt and in any event within two working days; and
       2. provide all necessary assistance as reasonably requested by TRP to enable TRP to respond to a Request for Information within the time frames for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
    3. Subject to clause [J.4.2,](#_bookmark42) TRP shall be responsible for determining at its absolute discretion whether information within its control relating to this Contract , the Services and/or the Concession Holder:
    4. is exempt from disclosure in accordance with the provisions of the Disclosure Legislation; or
    5. is to be disclosed in response to a Request for Information.
    6. The Concession Holder shall not respond directly to a Request for Information addressed to TRP unless expressly authorised to do so by TRP.
    7. The Concession Holder acknowledges that any information provided by it outlining Confidential Information are of indicative value only and that TRP may nevertheless be obliged to disclose Confidential Information in accordance with the Disclosure Legislation under the Department for Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000:
    8. without consulting with the Concession Holder, or
    9. following consultation with the Concession Holder and having taken its views into account.
    10. The Concession Holder shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit TRP to inspect such records as requested from time to time
    11. The provisions of this clause [J.4](#_bookmark41) shall survive expiry or termination of this Contract for any reason.

## Publicity, Media and Official Enquiries

* + 1. Without prejudice to TRP’ obligations under the FOIA, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
    2. Both Parties shall take reasonable steps to ensure that their servants, employees, agents, suppliers, professional advisors and consultants comply with clause [J.5.1.](#_bookmark43)
    3. TRP reserves the right to make press announcements without the consent of the Concession Holder in an emergency. TRP will, however, use reasonable endeavours to contact the Concession Holder before any such announcement is made.
    4. The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

## J.6 Intellectual Property Rights

* + 1. All Intellectual Property Rights in any guidance, Specification Schedule, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):
       1. furnished to or made available to the Concession Holder by or on behalf of TRP shall remain the property of TRP; and
       2. prepared by or for the Concession Holder on behalf of TRP for use, or intended use, in relation to the performance by the Concession Holder of its obligations under the Contract shall belong to TRP;

and the Concession Holder shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

* + 1. The Concession Holder hereby acknowledges that it has no rights other than as granted under this clause in connection with the Trade Marks and shall only use any marketing collateral materials (meaning for the purposes of this clause the marketing material used in association with the Trade Marks for the provision of the Services) in the form and style set out in the Brand User Guidelines and in conformity with the terms of any Approval required under the terms of this clause.
    2. The Concession Holder shall only use the name and the Logo for purposes which have been Approved.
    3. The Concession Holder shall supply to TRP for Approval pre-production samples of such branded materials prior to their production. Production items shall comply in all respects with the samples given Approval by TRP.
    4. For the purposes of any Approval required under the terms of the preceding sub-clause

[J.6.4](#_bookmark46) the Parties acknowledge that:

1. TRP shall be allowed at least 10 Working Days within which to Approve or provide written refusal calculated from the date of receipt of any samples submitted by the Concession Holder for Approval and
2. the Concession Holder shall build into its timetable sufficient time to implement any reasonable alterations suggested by TRP as a condition of its Approval and
3. any materials which do not meet with Approval shall not be used by the Concession Holder.
   * 1. The Concession Holder shall not in respect of any of its goods or services use any mark or name the same as or confusingly similar to any of the Trade Marks.
     2. The Concession Holder shall not seek to use or register anywhere worldwide the names of any of the Parks as trademarks, domain names or names that are confusingly similar (and reference to "Parks" in this context shall mean any of the Parks, gardens, recreation grounds, open spaces and other land to which the Regulations from time to time shall apply).
     3. The Concession Holder shall not sub-licence to any third party any of the rights and obligations derived under this clause.
     4. TRP reserves the right to bring any legal action against the Concession Holder for infringement of any Intellectual Property Rights.
     5. TRP reserves the right to treat any breach of this clause and the sub-clauses contained therein as a material breach and to which clause [N.3.1](#_bookmark61) (Termination on Default) will apply.
     6. The Concession Holder hereby assigns to TRP, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause [J.6.1](#_bookmark45)(b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Concession Holder. The Concession Holder shall execute all documentation necessary to execute this assignment.
     7. The Concession Holder shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.
     8. The Concession Holder shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to TRP a non-exclusive licence or, if itself a licensee of those rights, shall grant to TRP an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for TRP to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Concession Holder or to any other third party supplying services to TRP.
     9. The Concession Holder shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Concession Holder shall, during and after the Contract Period, indemnify and keep indemnified and hold TRP and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which TRP or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
        1. items or materials based upon designs supplied by TRP; or
        2. the use of data supplied by TRP which is not required to be verified by the Concession Holder under any provision of the Contract.
     10. TRP shall notify the Concession Holder in writing of any claim or demand brought against TRP for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Concession Holder.
     11. The Concession Holder shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Concession Holder, provided always that the Concession Holder:
         1. shall consult TRP on all substantive issues which arise during the conduct of such litigation and negotiations;
         2. shall take due and proper account of the interests of TRP; and
         3. shall not settle or compromise any claim without TRP’ prior written consent (not to be unreasonably withheld or delayed).
     12. TRP shall at the request of the Concession Holder afford to the Concession Holder all reasonable assistance for the purpose of contesting any claim or demand made or action brought against TRP or the Concession Holder by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Concession Holder’s obligations under the Contract and the Concession Holder shall indemnify TRP for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Concession Holder shall not, however, be required to indemnify TRP in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause [J.6.14](#_bookmark47) (a) or (b).
     13. TRP shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by TRP or the Concession Holder in connection with the performance of its obligations under the Contract.
     14. If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Concession Holder is likely to be made, the Concession Holder shall notify TRP and, at its own expense and subject to the consent of TRP (not to be unreasonably withheld or delayed), use its best endeavours to:
         1. modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or
         2. procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to TRP,

and in the event that the Concession Holder is unable to comply with clauses [J.6.16](#_bookmark48) (a) or (b) within 20 Working Days of receipt of the Concession Holder’s notification TRP may terminate the Contract with immediate effect by notice in writing.

* + 1. The Concession Holder grants to TRP a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Concession Holder owned or developed prior to the Commencement Date and which TRP reasonably requires in order exercise its rights and take the benefit of this Contract including the Services provided.

## CONTROL OF THE CONTRACT

## K.1 Transfer and Sub-Contracting

* + 1. The Concession Holder shall not assign the Contract or any part of it without Approval.
    2. The Concession Holder shall not sub-contract its obligations or duties under the Contract or any part thereof.
    3. TRP may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
       1. any Contracting Authority; or
       2. any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by TRP; or
       3. any private sector body which substantially performs the functions of TRP;

provided that any such assignment, novation or other disposal shall not increase the burden of the Concession Holder’s obligations under the Contract and any such party as detailed under (a) (b) or (c) shall be referred to in the remainder of this clause as the ‘Transferee’.

* + 1. Any change in the legal status of TRP such that it ceases to be a Contracting Authority shall not, subject to clause [K.1.6](#_bookmark49), affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to TRP.
    2. TRP may disclose to any Transferee any Confidential Information of the Concession Holder which relates to the performance of the Concession Holder’s obligations under the Contract. In such circumstances TRP shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Concession Holder’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
    3. Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

## K.2 Waiver

* + 1. The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay indulgence or omission in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
    2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause [A.5](#_bookmark1) (Notices).
    3. A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## K.3 Variation

* + 1. Subject to the provisions of this clause [K.3,](#_bookmark50) TRP reserves the right on giving reasonable written notice to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or the locations where the Services are to be provided) provided that such variation does not amount to a material change to the Services and this Contract. Such a change is hereinafter called a “Variation”.
    2. TRP may request a Variation by notifying the Concession Holder in writing of the “Variation” and giving the Concession Holder sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is reasonably and properly required in order to implement the Variation. TRP shall specify a time limit within which the Concession Holder shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Concession Holder accepts the Variation it shall confirm the same in writing.
    3. In the event that the Concession Holder is unable to accept the Variation and has reasonable grounds for its refusal or where the Parties, acting reasonably and in good faith, are unable to agree a change to the Contract Price , TRP may;
       1. allow the Concession Holder to fulfil its obligations under the Contract without the Variation; or
       2. terminate the Contract with immediate effect, except where the Concession Holder has already delivered all or part of the Services and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at clause Q.2.

## 

## K.4 Severability

* + 1. If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
    2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

## K.5 Remedies Cumulative

K.5.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## K.6 Extension of Initial Contract Period

K.6.1 Subject to agreement between the parties in accordance with clause [H.8](#_bookmark25) (Price adjustment on extension of the Initial Contract Period), TRP may in its absolute discretion and where permitted by law, by giving written notice to the Concession Holder not less than 12 months prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to 60 months. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause [H.8](#_bookmark25) (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

## K.7 Entire Agreement

* + 1. The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.
    2. In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
       1. the clauses of the Contract;
       2. the Schedules; and
       3. any other document referred to in the clauses of the Contract.

## 

## K.8 Scope and Validity of this Contract

* + 1. No variation of this Contract or any agreement or document entered into pursuant to this Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties.
    2. No Party has any authority or power to bind, contract in the name of, or to create a liability against the other Party in any way or for any purpose, unless specifically stated in this Contract
    3. No single or partial exercise or non-exercise of any right, power or remedy provided by this Contract or by law shall preclude any other or further exercise of such right, power or remedy or of any other right, power or remedy.

## K.9 Counterparts

K.9.1 This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

## LIABILITIES

## L.1 Liability, Insurance and Indemnity

* + 1. Neither Party excludes or limits liability to the other Party for:
       1. death illness or personal injury caused by its negligence; or
       2. fraud; or
       3. fraudulent misrepresentation; or
       4. any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982 or Section 12 of the Sale of Goods Act 1979.
    2. The Concession Holder shall during the Contract Period effect and maintain with a reputable insurance company public liability insurance and insurance policies which:
       1. include death illness or personal injury, or loss of or damage to property;
       2. are in existence throughout the Contract Period;
       3. are for a sum of not less than £10 million for each and every occurrence or series of occurrences arising out of any one occurrence;
       4. do not exclude or limit liability to the other Party for death illness or personal injury caused by its negligence;
       5. include product liability insurance for a sum of not less than £10 million for each and every occurrence or series of occurrences arising out of any one occurrence; and
       6. include employer’s liability insurance in respect of the employment of Staff working in the Park during the Contract Period in accordance with any legal requirement for the time being in force for a sum of not less than £10 million for each and every occurrence or series of occurrences arising out of any one occurrence.
    3. The Concession Holder shall produce to TRP, on request, summaries of all insurance policies referred to in clause [L.1.2.](#_bookmark56)
    4. The Concession Holder will be responsible for and make good or pay compensation for any damage or injury (including injury resulting in death) to any person or property arising by reason of or which would have not occurred but for this Contract or anything done or purported to be done hereunder and to keep the Crown and TRP fully and effectually indemnified against all costs charges expenses actions claims and demands in respect of any such damage or injury And this indemnity shall extend and apply to all sums paid by the Crown or TRP so as to indemnify their servants against any claim made against them in respect of any such damage or injury and also to all sums payable under any Statute Order Regulation Instruction Warrant or other Government provision to any officer servant or agent of the Crown or the personal representatives of any such person in respect of any such damage or injury PROVIDED ALWAYS that TRP shall be at liberty to settle as it may think fit after consultation with the Concession Holder any such actions claims or demands by payment of such sum or sums as TRP in its discretion may consider reasonable and may in its discretion after giving notice in writing to the Concession Holder cause any such damage to be made good and the expenses incurred by TRP in so doing or in making any such payment shall be repaid by the Concession Holder to TRP on demand PROVIDED NEVERTHELESS that the Concession Holder shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the circumstances of the case (it being agreed that an amount ascertainable under any Statute Order Regulation Instruction Warrant or other Government provision is a sum reasonably so payable) and in particular (where the payment is legally enforceable) to the damages which might be recoverable at common law.
    5. If, for whatever reason, the Concession Holder fails to give effect to and maintain the insurances required by the provisions of the Contract TRP may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Concession Holder.
    6. The provisions of any insurance or the amount of cover shall not relieve the Concession Holder of any liabilities under the Contract.
    7. It shall be the responsibility of the Concession Holder to determine the amount of insurance cover that will be adequate to enable the Concession Holder to satisfy any liability hereunder.
    8. The Concession Holder shall take out its own insurance to cover the risk of any damage, theft or injury to the Mobiles, Equipment, Property and Depreciating Property any cash, stock and Equipment at the Facilities

## WARRANTIES AND REPRESENTATIONS

* + 1. The Concession Holder warrants and represents that:
       1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Concession Holder;
       2. in entering the Contract it has not committed any Fraud;
       3. as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to TRP prior to execution of the Contract;
       4. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
       5. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
       6. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Concession Holder or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Concession Holder’s assets or revenue;
       7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
       8. in the 3 years prior to the date of the Contract:
          1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
          2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
          3. it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

## DEFAULT, DISRUPTION AND TERMINATION

## N.1 Termination on insolvency and change of control

* + 1. TRP may terminate the Contract with immediate effect by notice in writing where the Concession Holder is a company and in respect of the Concession Holder:
       1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
       2. a shareholders’ meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
       3. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors’ meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
       4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
       5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
       6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
       7. being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
       8. any event similar to those listed in [N.1.1](#_bookmark57)(a)-(g) occurs under the law of any other jurisdiction.
    2. TRP may terminate the Contract with immediate effect by notice in writing where the Concession Holder is an individual and:
       1. an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Concession Holder’s creditors; or
       2. a petition is presented and not dismissed within 14 days or order made for the Concession Holder’s bankruptcy; or
       3. a receiver, or similar officer is appointed over the whole or any part of the Concession Holder’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
       4. the Concession Holder is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
       5. a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Concession Holder’s assets and such attachment or process is not discharged within 14 days; or
       6. he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
       7. he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
    3. The Concession Holder shall notify TRP immediately if the Concession Holder undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (“change of control”). TRP may terminate the Contract by notice in writing with immediate effect within twelve months of:
       1. being notified that a change of control has occurred; or
       2. where no notification has been made, the date that TRP becomes aware of the change of control;

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

## N.2 Remedies in the event of inadequate performance

* + 1. Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Concession Holder’s obligations under the Contract, then TRP shall notify the Concession Holder, and where considered appropriate by TRP, investigate the complaint. TRP may, in its sole discretion, uphold the complaint and take further action in accordance with clause [N.3](#_bookmark60) (Termination on Default) of the Contract.
    2. In the event that TRP is of the reasonable opinion that there has been a material breach of the Contract by the Concession Holder, then TRP may, without prejudice to its rights under clause [N.3](#_bookmark60) (Termination on Default), do any of the following:
       1. without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Concession Holder shall have demonstrated to the reasonable satisfaction of TRP that the Concession Holder will once more be able to supply all or such part of the Services in accordance with the Contract;
       2. without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
       3. terminate, in accordance with clause [N.3](#_bookmark60) (Termination on Default), the whole of the Contract.
    3. Without prejudice to its right under clause [H.7](#_bookmark24) (Recovery of Sums Due), TRP may charge the Concession Holder for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by TRP or a third party in exercising its rights under clause [N.2.2](#_bookmark58) provided that TRP uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
    4. If the Concession Holder fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then TRP shall instruct the Concession Holder to remedy the failure and the Concession Holder shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as TRP may direct.
    5. In the event that:
       1. the Concession Holder fails to comply with clause [N.2.4](#_bookmark59) above and the failure is materially adverse to the interests of TRP or prevents TRP from discharging a statutory duty; or
       2. the Concession Holder persistently fails to comply with clause [N.2.4](#_bookmark59) above; TRP may terminate the Contract with immediate effect by notice in writing.

## N.3 Termination on Default

* + 1. TRP may terminate the Contract by written notice to the Concession Holder with immediate effect if the Concession Holder commits a Default and if:
       1. the Concession Holder has not remedied the Default to the satisfaction of TRP within 10 Working Days or such other period as may be specified by TRP, after issue of a written notice specifying the Default and requesting it to be remedied; or
       2. the Default is not, in the opinion of TRP, capable of remedy; or
    2. In the event that through any Default of the Concession Holder, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Concession Holder shall be liable for the cost of reconstitution of that data and shall reimburse TRP in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

## N.4 Break

N.4.1 Both parties shall have the right to terminate the Contract at any time by giving 12 months’ written notice to the other party.

## N.5 Consequences of Expiry or Termination

* + 1. Where TRP terminates the Contract under clause [N.3](#_bookmark60) (Termination on Default) and then makes other arrangements for the supply of Services, TRP may recover from the Concession Holder the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by TRP throughout the remainder of the Contract Period. TRP shall take all reasonable steps to mitigate such additional expenditure.
    2. Where TRP terminates the Contact under clause [N.4](#_bookmark62) (Break), TRP shall pay the Concession Holder the Early Termination Payment having firstly deducted any outstanding sums due from the Concession Holder to TRP and having secondly deducted the costs attributed to any Depreciating Property purchased under the Capital Investment Project which is not in a safe serviceable and clean condition.
    3. Save as otherwise expressly provided in the Contract:
       1. termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
       2. termination of the Contract shall not affect the continuing rights, remedies or obligations of TRP or the Concession Holder under clauses [H.3](#_bookmark20) (Payment and VAT), [H.7](#_bookmark24) (Recovery of Sums Due), [I.1](#_bookmark28) (Prevention of Corruption), [J.1](#_bookmark35) (Data Protection Act), [J.2](#_bookmark37) (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), [J.3](#_bookmark39) (Confidential Information), [J.4](#_bookmark41) (Freedom of Information), [J.6](#_bookmark44) (Intellectual Property Rights), [H.4](#_bookmark22) (Maintenance of Accounting Records), [H.5](#_bookmark23) (Audit), [K.5](#_bookmark52) (Remedies Cumulative), [L.1](#_bookmark55) (Liability, Indemnity and Insurance), [N.5](#_bookmark63) (Consequences of Expiry or Termination), [N.7](#_bookmark66) (Recovery upon Expiry or Termination) and Q.1 (Governing Law and Jurisdiction).

## Disruption

* + 1. The Concession Holder shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of TRP, its employees or any other contractor employed by TRP.
    2. The Concession Holder shall immediately inform TRP of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
    3. In the event of industrial action by the Staff, the Concession Holder shall seek Approval to its proposals to continue to perform its obligations under the Contract.
    4. If the Concession Holder’s proposals referred to in clause [N.6.3](#_bookmark64) are considered insufficient or unacceptable by TRP acting reasonably, then the Contract may be terminated with immediate effect by TRP by notice in writing.
    5. TRP shall at its absolute discretion be entitled to close all or parts of the Park or to restrict entry to all or parts of the Park or to the Facilities for such period as it determines and in such event the provisions of clause [N.6.7](#_bookmark65) shall apply.
    6. TRP may from time to time host Special Events in the Park and as a result it may decide to temporarily suspend access to and use of the Facilities by the Concession Holder provided that where possible TRP will provide as much notice as reasonably practicable to the Concession Holder and in the event of such suspension the provisions of clause
    7. shall apply.
    8. In the case of temporary suspension of access to the Facilities and full or part closure of the Parks due to Special Events other than in respect of state events and funerals (for the reason that state events and funerals do not attract any compensation on closure of the Park or its access and any claims in respect thereof will not be accepted) TRP will consider an application from the Concession Holder for compensation where made within 3 months, based on the following:
       1. that any loss of profit or cost incurred by the Concession Holder has been unavoidable to the extent that the Concession Holder is able to demonstrate that it did everything possible to mitigate its loss;
       2. that both Parties shall act reasonably the Concession Holder in its submission of any claim for compensation and TRP when considering the same and;

TRP’s decision on whether to pay compensation for any claim shall be final.

## N.7 Recovery upon Termination

* + 1. On the termination of the Contract for any reason, the Concession Holder shall promptly at its own cost:
       1. return to TRP all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractor, which was obtained or produced in the course of providing the Services;
       2. return and yield up the Premises to the condition required under the terms of clauses [G.1](#_bookmark9) and [G.5;](#_bookmark17)
       3. deliver to TRP all Property (including materials, documents, information and access keys) provided to the Concession Holder and all Depreciating Property. Such Property and Depreciating Property shall be handed back in good working order and condition as required in accordance with the terms of clause [G.3](#_bookmark15) (allowance shall be made for reasonable wear and tear);
       4. assist and co-operate with TRP to ensure an orderly transition of the provision of the Services to the Replacement Concession Holder and/or the completion of any work in progress; and
       5. provide all information concerning the provision of the Services which may reasonably be requested by TRP for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing TRP or the Replacement Concession Holder to conduct due diligence.
    2. If the Concession Holder fails to comply with clause N.7.1 (a) and (c), TRP may recover possession thereof and the Concession Holder grants a licence to TRP or its appointed agents to enter (for the purposes of such recovery) any premises of the Concession Holder or its permitted suppliers or sub-contractor where any such items may be held.

## N.8 Force Majeure

* + 1. Neither Party shall be liable to the other party for any delay in or failure to perform its obligations under the Contract (other than in respect of any obligation for the payment of money or for Liability, Insurance and Indemnity under clause L.1) if such delay or failure results from a Force Majeure event.
    2. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event.
    3. If any such event prevents either party from performing all of its obligations under the Contract for a period in excess of 3 months, either party may terminate the Contract by notice in writing with immediate effect.
    4. Any failure or delay by the Concession Holder in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Concession Holder.
    5. If either of the Parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in clause [N.8.1](#_bookmark67) it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

## N.9 Concession Contracts Regulations 2016

N.9.1 The Contract will terminate in the event that any of the circumstances arise which are specified under the Concession Contracts Regulations 2016 to be automatic grounds for termination

**O HANDOVER**

**O.1 Catalogue Information**

O.1.1 Within 20 working days of being so requested by TRP the Concession Holder shall provide and thereafter keep updated in a fully indexed and catalogued format all information reasonably necessary to enable TRP to issue tender documents for the future provision of the Services.

## O.2 Schedule of Works

O.2.1 The Concession Holder will provide access to TRP and its contractors to carry out a survey and inspection of the Premises within 12 months prior to the expiry of the Contract Period and TRP will then prepare a Schedule of Works that they consider the Concession Holder needs to undertake in respect of the Premises to return them to a reasonable condition.

## O.3 Dilapidation Works

* + 1. The Concession Holder will either:
       1. arrange for the works referred to in the Schedule of Works to be carried out outside of trading hours and the Concession Holder will be responsible for all costs involved in carrying out the works; or
       2. subject to agreement between the parties TRP’s contractors may undertake the Schedule of Works and TRP may recover the full cost of the works from the Concession Holder

## O.4 Access and Recovery on Default

O.4.1 In the event of the Concession Holder not carrying out the works within 3 months before the expiry of the Contract TRP may enter the Premises and carry out the works and recover the full costs from the Concession Holder

## O.5 Removal of Concession Holder’s Property

O.5.1 The Concession Holder shall remove all Equipment from the Premises by midnight on the day of expiry of this Contract or within 5 Working Days of earlier termination.

## O.6 Liability on Removal

* + 1. The Concession Holder shall be held liable for any damage to the Premises caused as a consequence of the removal of the Equipment and where the Concession Holder does not remove the Equipment by midnight on the day of the expiry of this Contract (or 5 Working Days following upon earlier termination) then TRP may remove and dispose of all such Equipment and the reasonable costs and expenses involved in doing so shall be treated as a debt of the Concession Holder.
    2. Where TRP chooses to sell some Equipment (though no duty exists to do so) the proceeds will be deducted from the debt of the Concession Holder and where the sums raised exceed the debt due to TRP the excess will be payable from TRP to the Concession Holder.
    3. The Concession Holder shall indemnify TRP in respect of any claim made by a third party in relation to the removal or disposal of Equipment;

## O.7 Signage etc., or Property

O.7.1 The Concession Holder is not to remove any Property or Depreciating Property or Signage from the Premises;

## O.8 Health and Safety File Documents and Records

* + 1. The Concession Holder will update as necessary and furnish TRP with (in so far as applicable to the Facilities):
       1. a current copy of the Health and Safety File (completed in accordance with the requirements of the CDM Regulations and pursuant to clause [I.6;](#_bookmark34)
       2. all associated Planned Maintenance Programme records;
       3. all other relevant records relating to the foregoing in the possession of the Concession Holder.

## O.9 TUPE

* + 1. The Parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply in respect of the award of the Contract and that for the purposes of those Regulations the undertaking concerned or any relevant part of the undertaking shall transfer to the Concession Holder on the Commencement Date.
    2. Subject to the terms of clause [O.9.5](#_bookmark71) TRP accepts no responsibility whatsoever for the provision of TUPE information and/or its accuracy.
    3. The Concession Holder shall indemnify TRP against any claims made against TRP at any time by any person currently or previously employed by TRP or by the Concession Holder for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise (and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by TRP) resulting from any act or omission of the Concession Holder on or after the Commencement Date except where such claims arises as a result of any breach of obligations (whether contractual, statutory, at common law or otherwise) by TRP arising or occurring before the Commencement Date.
    4. Where in the reasonable opinion of the Parties the Transfer of Undertakings (Protection of Employment) Regulations 2006 or such other similar provisions as may be in force at the relevant time are likely to apply under the terms of clause [O.9.1](#_bookmark69) or on the termination or expiration of the Contract, the information to be provided by the Concession Holder shall include (as applicable) accurate information relating to the Staff who would be transferred under the same terms of employment under those Regulations including in particular:
       1. the number of Staff who would be transferred but with no obligation to specify their names;
       2. in respect of each of those members of Staff their age sex salary length of service hours of work overtime hours and rates any other factors affecting redundancy entitlement and any outstanding claims arising from their employment;
       3. the general terms and conditions applicable to those members of Staff including probationary periods, retirement age, periods of notice, current pay agreements, working hours, entitlement to annual leave, sick leave, maternity and special leave, terms of mobility, any loan or leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits;
       4. details of pensions entitlements, if any; and
       5. job titles of the members of Staff affected and the qualifications required for each position.
    5. TRP shall take all necessary precautions to ensure that the information referred to in condition [O.9.4](#_bookmark70) is given only to service providers who have qualified to tender for the future provision of the Services. TRP shall require that such service providers shall treat that information in confidence; they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an ITT issued by TRP and that they shall not use it for any other purpose.

## O.10 Indemnity arising on Handover

* + 1. The Concession Holder shall indemnify TRP against any claim made against TRP:
       1. at any time by any person in respect of any liability incurred by TRP arising from any deficiency or inaccuracy in information which the Concession Holder is required to provide under this Contract and in the event that the information provided by the Concession Holder under this Condition [O](#_bookmark68) becomes inaccurate, whether due to changes to the employment and personnel details of the affected Staff made subsequent to the original provision of such information or by reason of the Concession Holder becoming aware that the information originally given was inaccurate the Concession Holder shall notify TRP of the inaccuracies and provide the amended information and the provisions of this sub condition shall apply during the continuance of this Contract and indefinitely after its termination.
       2. in respect of all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any Staff or other employee or person claiming to be Staff on any date upon which the Contract is terminated and/or transferred to any third party ("Relevant Transfer Date") arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.
    2. At the request of TRP the Concession Holder shall indemnify the third party which TRP has selected to provide the Services in the future (“the New Concession Holder”) in respect of all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any Staff or other employee or person claiming to be staff on any date upon which the Contract is terminated and/or transferred to the New Concession Holder (“Relevant Transfer Date”) arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.

## O.11 Access to Representatives of any Prospective Service Provider

O.11.1 The Concession Holder shall allow reasonable access to the Premises (in the presence of TRP Representative) to any person representing any service provider whom TRP has selected to tender for the future provision of the Services Provided That for such purpose TRP shall give the Concession Holder 5 Working Days' notice of a proposed visit together with a list showing the names of all persons who will be attending the Premises. Their attendance shall be subject to compliance with the Concession Holder’s health and safety and security procedures (subject to such compliance not being in conflict with the objectives of the visit)

## O.12 Co-Operation on Handover

O.12.1 The Concession Holder shall co-operate fully with TRP during the handover arising from the completion or earlier termination of the Contract and this co-operation during the setting up operations period of the new Contract shall extend to allowing full access to and providing copies of all documents, reports, summaries and any other information reasonably necessary in order to achieve an effective transition without disruption to routine operational requirements.

## O.13 Keys

O.13.1 The Concession Holder shall surrender all keys to the Premises at the end of the Contract Period and ensure that TRP has details of all current alarm codes.

## O.14 Antecedent Rights and Remedies

O.14.1 Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Concession Holder and TRP accrued before such termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

## O.15 Computer Documents

O.15.1 Within 10 Working Days of being so requested by TRP the Concession Holder shall transfer to TRP all computerised documents necessary for the operation of the Services, so far as is reasonably possible, in a form which can readily be used by TRP.

## P NOT USED

## GOVERNING LAW AND DISPUTE RESOLUTION (INCL. MINOR BREACHES)

## Q.1 Governing Law and Jurisdiction

Q.1.1 Subject to the provisions of clause Q.2, TRP and the Concession Holder accept the exclusive jurisdiction of the English courts and agree that the Contract and all non- contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

## Q.2 Dispute Resolution

* + 1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
    2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
    3. If the dispute cannot be resolved by the Parties pursuant to clause the Parties shall refer it to mediation pursuant to the procedure set out in clause [Q.2.5](#_bookmark75) unless (a) TRP considers that the dispute is not suitable for resolution by mediation; or (b) the Concession Holder does not agree to mediation.
    4. The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Concession Holder and the Staff shall comply fully with the requirements of the Contract at all times.
    5. The procedure for mediation and consequential provisions relating to mediation are as follows:
       1. a neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to an appropriate mediation provider to appoint a Mediator.
       2. The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from an appropriate mediation provider to provide guidance on a suitable procedure.
       3. Unless otherwise agreed, all negotiations connected with the dispute and any settlement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
       4. If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
       5. If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause [Q.2.6.](#_bookmark76)
    6. Subject to clause [Q.2.2,](#_bookmark73) the Parties shall not institute court proceedings until the procedures set out in clauses [Q.2.1](#_bookmark72) and [Q.2.3](#_bookmark74) have been completed save that:
       1. TRP may at any time before court proceedings are commenced, serve a notice on the Concession Holder requiring the dispute to be referred to and resolved by arbitration in accordance with clause [Q.2.7.](#_bookmark77)
       2. if the Concession Holder intends to commence court proceedings, it shall serve written notice on TRP of its intentions and TRP shall have 21 days following receipt of such notice to serve a reply on the Concession Holder requiring the dispute to be referred to and resolved by arbitration in accordance with clause [Q.2.7.](#_bookmark77)
       3. the Concession Holder may request by notice in writing to TRP that any dispute be referred and resolved by arbitration in accordance with clause [Q.2.7,](#_bookmark77) to which TRP may consent as it sees fit.
    7. In the event that any arbitration proceedings are commenced pursuant to clause [Q.2.6:](#_bookmark76)
       1. the arbitration shall be governed by the provisions of the Arbitration Act 1996;
       2. TRP shall give a written notice of arbitration to the Concession Holder (the “Arbitration Notice”) stating:
          1. that the dispute is referred to arbitration; and
          2. providing details of the issues to be resolved;
          3. the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with P.2.7 (b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
          4. the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
          5. if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by TRP under clause [Q.2.7](#_bookmark77)(b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
          6. the arbitration proceedings shall take place in London and in the English language; and

* + - * 1. the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

## Q.3 Minor Breaches

* + 1. A minor breach of this Contract shall be a non-persistent breach in the nature of but not limited to the following:
       1. Failure to comply with the maintenance obligations of this Contract
       2. Payment of fees or any other sums due under this Contract in arrears of not more than one month
       3. Health and Safety violations
       4. Standards of customer care not in accordance with this Contract, including under staffing, use of under-qualified Staff or non-English speaking Staff, Staff swearing in front of members of the public or customers, poor standards of dress / uniform or Staff smoking on duty
       5. Poor cleanliness standards (Staff, Facilities, goods, facilities, vehicles etc.)
       6. Poor standards of rubbish storage and disposal or littering
       7. Environmental health violations, including poor food preparation standards and inadequate pest control
       8. Non-opening / late opening / early closing and/or operating outside of the agreed set opening times
       9. Operating outside of the agreed sites / routes
       10. Poor traffic management including the use of unauthorised vehicles, traffic violations in respect of late delivery, speeding, parking, lack of safety or courtesy to park visitors, and/or obstruction of thoroughfares including the unreasonable or unauthorised disruption to park operations and/or the enjoyment of the Park by visitors
       11. Noise / Music violations
       12. Sale of non-approved goods or at non-approved prices
       13. The display of unauthorised advertising
    2. TRP shall bring any breaches to the attention of the Concession Holder by setting out:
       1. minor breaches which have occurred;
       2. minor breaches which still remain to be remedied; and
       3. minor breaches which have been remedied.
    3. If TRP is of the opinion that minor breaches are not being rectified in a reasonable time frame or that reasonable action is not being taken to avoid recurring minor breaches, then a Rectification Meeting may be called by TRP at which both Parties will agree remedies and timescales.
    4. Persistent Failure of the Concession Holder to comply with actions agreed at a Rectification Meeting, or persistent minor breaches of this Contract, such that TRP calls Rectification Meetings in consecutive calendar months, may be regarded as a Default to which clause N.3.1 (Termination on Default) will apply.
    5. For the avoidance of doubt, nothing within these conditions shall in any way limit any rights or remedies which TRP may have elsewhere within this Contract, including, but not limited to, termination of this Contract by reason of cumulative and persistent failure to remedy minor breaches pursuant to these conditions.

1. *[SURETY]*
   * 1. […] guarantees to TRP that the Concession Holder will comply with all its obligations under this Contract and agrees to compensate TRP in full on demand for all liability resulting from any failure by the Concession Holder to comply with any of those obligations.
     2. The obligations of […] remain fully effective even if this Contract shall be disclaimed or TRP gives the Concession Holder extra time to comply with any obligation or does not insist on strict compliance with its terms.].

**IN WITNESS** of which the parties have signed this Contract on the date set out above.

**SIGNED** for and on behalf of **The Royal Parks**

|  |
| --- |
| Signature: |
| Name (in capitals): |
| Position: |



**SIGNED** for and on behalf of **[*Concession Holder*]**

|  |
| --- |
| Signature: |
| Name (in capitals): |
| Position: |



## PROPERTY SCHEDULE

## PROPERTY INVENTORY

**PREMISES SCHEDULE**

Page 82 of 102

## COMMISSION PRICING SCHEDULE

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Financial Year** | **Dates** | **Sales Forecast (£)** | **Commission**  **(expressed as a % of Net Sales)\*** | **Forecast**  **Net Commission (£)** | **Minimum**  **Annual Commission Payment (£)** |
| 2017 / 18 |  |  |  |  | £0 |
| 2018 / 19 |  |  |  | £720,000 |
| 2019 / 20 |  |  |  | £735,000 |
| 2020 / 21 |  |  |  | £755,000 |
| 2021 / 22 |  |  |  | £775,000 |
| 2023 / 24 |  |  |  |  | £705,000 |

## MONITORING SCHEDULE

1. TRP will inspect and monitor the provision of the Services. This information will be shared with the Concession Holder.
2. At regular agreed intervals the Concession Holder will meet TRP (“Contract Liaison Meetings”) to discuss the performance of the Contract.
3. The Contract Manager, and such other personnel as considered appropriate by the Concession Holder, shall attend the Contract Liaison Meetings with TRP Representative and such other personnel as considered appropriate from TRP.
4. TRP shall make the necessary arrangements for these meetings. An agenda will be agreed in advance. During these meetings the information requested in clause (5) below will be presented, past performance will be reviewed and issues of strategic forward planning will be discussed. A record of all meetings shall be made by TRP and provided to the Concession Holder within 10 working days.
5. The Concession Holder shall submit the following reports to TRP at the frequency stated.

## Financial Reports and Forecasts

* Total turnover
* Breakdown of sales
* Non Commissionable Sales (Staff/Friends)
* Average spend per head (calculated using the number of beverages sold) in each location
* Performance against monthly/annual budget
* Monthly rolling sales forecast
* TRP commission income

The information shall be provided as follows:

* Within 7 days of the end of each month, the month being the actual month 1st to 28th 30th 31st respectively.
* Within 7 days of the end of each quarter, the quarter being the three months of 1st to 28th 30th 31st respectively.

Additional information may be requested at any time either as a one off request or on an on- going basis and the Concession Holder shall comply with all reasonable requests to provide further information in the timescale expected.

## Annual Turnover and Concession Forecasts

The Concession Holder shall provide TRP by 31st December each year, a one year forecast of sales and profit and loss for the following Financial Year showing:

* forecast volume of sales by period;
  + a comparison of the foregoing against actual results for the current financial year to date and the forecasted out-turn for the balance of the financial year;
  + any proposed tariff increases;
* the Contract Price which it forecasts will result to TRP from such business.

The budget shall be accompanied by a commentary on any changes in the market place affecting the financial year and any other pertinent factors. The format of the budget is to be agreed between the Concession Holder and TRP prior to the commencement of the Contract.

## Annual Communications and Marketing Plan

The Concession Holder shall produce a Communications and Marketing plan by 31st December each year detailing the proposed marketing activity by location and spend for the period April to March of the following year.

## Food Hygiene, Health and Safety and RIDDOR

The Concession Holder shall undertake independent Health and Safety and Food Safety inspections of the Facilities and Services at least bi-annually, and provide TRP with a copy of the report within 10 working days of receipt, together with a plan identifying actions to be undertaken and by when.

Should the Health and Safety or Food Safety inspection report identify any issues of statutory non compliance, the Concession Holder is required to address these issues immediately and to notify TRP of the remedial actions taken, as well as plans to ensure future compliance is maintained.

In addition, TRP may implement its own independent Health and Safety and Food Safety inspections and will consider the results when reviewing contract performance and considering contract extension requests.

The Concession Holder shall produce a quarterly report itemising:

* Health and Safety and Food Safety actions;
* RIDDOR summary on accidents to customers and staff; and
* Staff training undertaken in Health and Safety, Food Safety and Fire Evacuations procedures etc.

## Customer Feedback

The Concession Holder shall implement a procedure Approved by TRP for the systematic receiving and monitoring of customer feedback, presenting this in a monthly report to TRP. This should include both complaint handling and the monitoring of social media feedback.

## Maintenance Plan

The Concession Holder shall maintain a monthly Maintenance Plan itemising any planned preventative maintenance undertaken and its outcome and any unplanned maintenance issues, their cause and the remedy, and itemising any impact such maintenance had on the business.

## Environmental Management

The Concession Holder shall produce its own Environmental Management Plan, including waste management, with bi-annual reports submitted to TRP.

## Property Schedule and Equipment Register

The Concession Holder shall update the Property Schedule and Equipment Register on a quarterly basis, listing additional assets acquired and assets disposed of. The Schedule/Register shall include the make, model and serial number of Property/Depreciating Property//Equipment and photographs and descriptions of furniture, fitting and fixtures.

1. TRP shall carry out the following audits and monitoring of the schedule and shall share the results with the Concession Holder at the Contract Liaison Meetings:

## Financial Audits

TRP will conduct an annual financial audit of the turnover of the Concession Holder as may be required in accordance with clauses H.4 Maintenance of Accounting Records and H.5 (Audit).

Concession Holder will be expected to comply with TRP appointed auditors and make the relevant documentation available on request.

## Customer Service

TRP will implement its own ‘Mystery Diner’ programme to ensure consistent customer service, and will consider the results when reviewing contract performance and considering contract extensions requests. A minimum score of 80% is required for service, food and drink, and staff.

The Concession Holder will be asked to respond in writing to any scores below 80% with plans for rectifying any issues within 10 Working Days of receipt of the report, and these plans will be monitored for improvement within an agreed and reasonable timeframe.

Where the Concession Holder has scored below 80% in two consecutive Mystery Diner reports, or in three reports over the course of 12 months, the Concession Holder will be subject to an additional Mystery Diner visit and will reimburse TRP in respect of the costs of additional visits.

## PLANNED MAINTENANCE PROGRAMME SCHEDULE

## ROYAL PARKS ENVIRONMENTAL POLICY SCHEDULE

Covering an area of 2000 hectares TRP are: Bushy Park, The Green Park, Greenwich Park, Hyde Park, Kensington Gardens, The Regent's Park and Primrose Hill, Richmond Park and St James's Park. TRP also manages Victoria Tower Gardens, Brompton Cemetery, Grosvenor Square Gardens, Longford River and the gardens of 10, I I and 12 Downing Street. The eight Royal Parks have been awarded Green Flag status, which recognises them as some of the United Kingdom's best kept green spaces and heritage landscapes. TRP are also subject to a number of international, national and local conservation designations.

We believe that all aspects of our operation should be carried out in a way that minimises our adverse impact on the environment and maintains the economic viability of the parks. Therefore we have adopted environmental practices based on a sustainability framework with four key pillars:

1. Conserve and enhance the unique landscapes, built heritage & biodiversity
2. People, education, fairness and improving wellbeing
3. Mitigation and adapting to climate change
4. Sustainable growth- providing environmentally excellent and financially viable green open spaces to the public

Within these pillars our key commitments include:

* Effective conservation of landscape, wildlife and buildings
* Promotion of sustainable development through education and community engagement
* Enhancing biodiversity by appropriate management of TRP and participation in Biodiversity Partnerships
* Promotion of sustainable events to ensure everything practicable is done to not negatively impact on biodiversity
* Using raw materials and utilities as economically as is practicable, while investigating all realistic possibilities for reduction, recovery and recycling of waste
* Managing transport options to reduce harmful emissions, as well as actively encouraging more sustainable modes of travel such as cycling
* Responsibly assessing, controlling and reducing the unsustainable use of natural resources
* Ensuring all Royal Parks procurement decisions consider our sustainable procurement guidelines
* Seeking to ensure that our sponsors, partners and contractors operate within ethical and sustainability policy requirements
* Ensuring that all Royal Parks staff are kept informed and involved in the sustainability strategy and their individual responsibilities within it in helping to deliver policies
* Consulting stakeholders in the decision making processes

We will continually assess all areas of our operations which impact on the environment and incorporate the necessary procedures and controls to prevent environmental damage and pollution. We will comply with all relevant legislation, and with the standards and obligations to which we subscribe. We will set objectives and targets to ensure continual improvement in our

environmental and social performance. A Green Housekeeping Committee has been established within TRP to facilitate and implement the commitments made within this policy and to ensure compliance with the requirements of the internationally recognised environmental management system standard BS EN ISO 14001: 2015. We will strive to provide leadership and expertise in the sustainable management of urban park environments. Working in partnership with like minded organisations, we will aim to extend the boundaries of sustainable practice and promote sustainable development to the wider community.

**CONDITION SURVEY SCHEDULE**

|  |
| --- |
|  |
|  |
|  |
|  |

## SPECIFICATION SCHEDULE

[**SCHEDULE OF SITE SPECIFIC REQUIREMENTS FOR THE PARK**](#_bookmark112)

Catering Deliveries - Permitted Routes:

## CAPITAL INVESTMENT PROJECT SCHEDULE

‘Capital Investment Sum ‘ means [ ]

‘Capital Investment Project ‘ means the proposed project to [ insert outline details]

The Concession Holder will provide TRP with the Specified Details of the proposed Capital Investment Project for Approval as soon as practical and no later than one month from the date hereof

The Specified Details will include the following ;-

Plans of the proposed Works including the design and materials to be used Copy of Design and Access Statement.

Copies of ‘as-built’ plans in Autocad format

Details of the proposed contractors and any sub contractors

Fully itemised budget

Applications for planning consent and building regulation consent All O&M (operation and maintenance) manuals

Proposed timetable

The Concession Holder will not commence the Capital Investment Project nor apply for any planning consent until TRP has Approved the Specified Details and the Concession Holder will then carry out the Works in accordance with the Works Conditions ( as attached and as amended by TRP to be appropriate for the nature of the Works)

The timetable for the Works will be agreed between the parties prior to commencement of the Works

TRP will be entitled to enter the Premises to inspect the Works at any time subject to reasonable notice and if TRP is not satisfied with the Works it may serve notice on the Concession Holder requiring it to remedy any defects or problems and if the Concession Holder does not remedy the Works to TRP’s satisfaction TRP may carry out such remedial works and recover the cost of doing so from the Concession Holder

The Concession Holder will notify TRP of completion of the Works so that TRP can carry out an inspection and If TRP are not satisfied they will provide the Concession Holder with a list of outstanding items which they require to be carried out within a specified timescale and if the Concession Holder fails to comply with these requirements TRP may carry out the outstanding works and recover the cost of doing so from the Concession Holder

Where it is appropriate TRP will also require that the Concession Holder obtains warranties or guarantees in respect of the Works from the contractors and sub contractors and such warranties or guarantees must be available for the benefit of TRP as well as the Concession Holder

The Concession Holder will produce evidence of the costs of the Works including receipted invoices to TRP at the end of each month and on completion of the Works so that TRP can verify the Actual Capital Expenditure.

## THE WORKS CONDITIONS

**Definitions**

‘Compound’ *( insert details if relevant eg. dimensions, position etc)*

‘Land’ *(insert details if relevant*)

‘Method Statement’ means any risk assessments or method statements Approved by TRP for carrying out the Works which may, for example, but without limitation, include the following ;-

Pre construction health and safety plan

Method statement for the site set up commissioning and use Risk assessment relating to design and operational risks Health and safety plan

Pedestrian and traffic management plan

## Before the Commencement of the Works

The Concession Holder shall at its own expense:-

* 1. Apply for and obtain all necessary planning permissions building regulation and other necessary consents required by virtue of any Statute Order Regulation or Byelaw and to forward to the Royal Parks Representative copies of all applications and of plans and drawings submitted therewith for Approval
  2. (*Photograph the Land and site of the Compound and deposit one clearly labeled copy of such photographs with TRP Representative prior to the Works commencing and the photographic survey in so far as it relates to any particular piece of land will be evidence of the state and condition of that land prior to the commencement of the Works for the purposes of any required reinstatement*)
  3. *(Carry out a cat scan of the area of the Land and Compound and to provide to TRP Representative prior to the Works commencing the results thereof*)
  4. Produce any outstanding Method Statements for Approval prior to commencing the Works provided that the Concession Holder shall not be prevented from undertaking any part of the Works in respect of which a Method Statement has already been Approved
  5. Nominate at least 3 persons with appropriate authority (as points of contact) and supply to the MPS and to TRP Representative details of an emergency outside working hours contact telephone number and the Concession Holder shall notify the MPS and TRP Representative of any changes in personnel from the list initially submitted

## General

* 1. To carry out or procure the carrying out of the Works in accordance with the Method Statement
  2. (*Whenever any excavation is made in the Park pursuant to the terms of this Contract (and notwithstanding any other obligation imposed by these Works Conditions): -*
     1. *excavation will be carried out by a method agreed with TRP Representative*
     2. *to undertake all proper safety precautions (including the fencing and lighting of the excavation) to ensure the safety of the public using the Park*
     3. *if the soil or surface of the Park is disturbed or damage of any kind is done to the Park or anything therein forthwith fill in all excavations made and with such materials as shall be specified and Approved to level and restore the surface of the Park (including the making good of any subsidence that occurs within 12 months of filling in such excavations) so that it is and remains level with the surface of the surrounding Park land and to re-instate any drains cables footways structures gravelled areas and hard areas therein so disturbed or damaged in as near as practicable to their former position and with the same materials as before and remove all rubbish and make good any damage howsoever caused in the process of carrying out any such work to the reasonable satisfaction of TRP Representative*
     4. *where any excavation is carried out*
        1. *any turf, top soil and sub soil shall be separated and sorted in an appropriate manner. Turf removal is to be by a method agreed with TRP Representative. Where appropriate reinstatement of excavations will require backfilling and to be consolidated to avoid settlement. In backfilling any excavation the sub soil shall be replaced first and then a minimum depth of 45cm of top soil shall be placed on top.*
        2. *The removed turf shall be relayed to finished levels and top dressed where any excavation crosses a surfaced footpath or hardstanding area reinstatement will comprise a Binder course 60mm thick using a 20 mm DBM tarmac and a Wearing course 25mm thick using a 6mm DBM tarmac and surface treatment will be in accordance with drawing PS/LDG/1011/10 The extent of the tarmac to be reinstated to be Approved. On occasion tunneling techniques may be insisted upon so as to avoid scarring of footpath surfaces*

*Following completion of the Works any remedial turf repair or planting will be carried out by TRP or its contractors and the cost charged to the Concession Holder*

* 1. To complete the Works in a good and workmanlike manner in accordance with relevant Health and Safety legislation and comply with all statutory regulations and consents and following completion the Concession Holder will repair and make good any damage to the fabric of the Park caused by the Works or anything done or purported to have been done under this Contract
  2. If the Concession Holder does not carry out any required reinstatement in pursuance to the requirements of this clause and of which the Concession Holder shall have written notice within such reasonable period as will be specified or does not carry out the Works to the satisfaction of TRP then TRP may carry out the Works, or permit the Works to be carried out by its contractors, the cost of which will be a debt due from the Concession Holder
  3. To keep the plant machinery and equipment secured when not in use and to ensure that the same does not leak or otherwise contaminate the Park
  4. (*Other than within the Land or the Compound*) not to store place or stack any materials within the Park
  5. Footpaths must be kept open during the Works unless agreed with TRP Representative
  6. The Works and any vehicular visits will both be limited to the hours to be Approved for the Works (“the Permitted Hours”)
  7. The Concession Holder will give not less than 2 working days notice in writing of a request to work outside of the Permitted Hours

### Compound

* 1. *The Compound must be surrounded by anti-climb Heras fencing without spikes/ timber hoarding painted TRP green*
  2. *The Heras fencing must be double clipped and erected in accordance with best practice including triangulation stays at regular intervals if necessary*
  3. *The Heras fencing must be locked at all times when not in use and a full set of keys to all gates providing access to the Compound shall be supplied to the MPS and TRP Representative*
  4. *Notwithstanding the requirements for signage as hereinafter referred to in these Works Conditions the Compound shall be lit at night (if so requested by TRP Representative)*
  5. *The Compound shall be kept clean tidy and free of rubbish at all times*
  6. *Other than Oil for a generator no dangerous inflammable or toxic material will be stored in the Compound and for the purpose of these Works Conditions the term “Oil” shall have the same meaning as that provided in the Control of Pollution (Oil Storage) (England) Regulations 2001 and all Oil for the generator where not contained within the generator itself shall be stored outside of the Park*
  7. *Whenever the Works are left unattended all excavations must remain uncovered (but secure within the Compound) to allow the MPS to carry out security searches when necessary*
  8. *Spoil heaps should be stored in the Compound unless another suitable location is agreed with the Park Manager*.

## Terms and Conditions for the Protection of the Park

The Concession Holder will

* 1. Not work anywhere or be in the Park other than as permitted by this Contract
  2. Not invite or permit any person other than those engaged in or associated with the Works into the Compound or on to the Land (excepting TRP Representative, The Park Manager or other officers of TRP exercising authority under this Contract)
  3. Arrange and complete security clearance for all staff working in the Park in connection with the Works
  4. Ensure that any contractor (including any employee or sub contractor appointed by any contractor) abides by any legal requirements for the protection of wildlife and in

particular that no nesting birds shall be disturbed

* 1. Ensure no material substance equipment or plant or other dangerous thing under the control of the Concession Holder escapes into the Park or is accidentally or negligently or deliberately placed therein and in the event of any of the same being in the Park the Concession Holder shall immediately remove the same
  2. Not use or interfere with any Park property other than as is permitted in this Contract
  3. *Not allow the playing of radios or such like within the Land or Compound by persons engaged in the works*
  4. *Permit the Park Manager, Royal Parks Representative or the MPS to inspect or search any part of the Compound or Land and any equipment, material or plant, thereon with or without notice at any time*
  5. Ensure that the utmost care is taken not to damage (which expression shall include diesel spillage) the fabric of the Park (including the road surfaces pavements grass soil trees hedges bushes and paving stones) during the Works and access or egress thereto or loading and unloading of materials and if any damage is caused the Concession Holder shall immediately notify TRP Representative and make good to their satisfaction

## Vehicular Access

* 1. Prior to the commencement of the Works the Concession Holder shall supply a schedule with details of the all vehicles and their registration numbers to TRP Representative and the MPS visiting or required for carrying out the Works.
  2. All vehicles permitted on to the Park shall comply with clause E of this Contract “Vehicular Access.”
  3. If vehicular access is required over a grassed area a trackway shall be laid in order to protect the grass
  4. Vehicles will adhere to the speed limit of 5 mph on any road or footpath which they are permitted to use within the Park
  5. Any vehicle encountering difficulty with the route referred to in works Clause E 1.2(b) must in the first instance contact the Park Manager or the MPS
  6. All vehicles shall comply with the Road Traffic Acts and be fully insured
  7. The Concession Holder should ensure that safe passage around the vehicles is available for pedestrians whilst the vehicles are being moved into or out of the Park
  8. The Concession Holder shall immediately clean any soil/debris caused or left on the Park roads by vehicles visiting the Park

## Signage

* 1. Adequate safety signs cones and lighting and shall be so placed as to give full warning to vehicles and pedestrians of the presence of the Works
  2. The traffic and pedestrian management signage must comply with the guidance issued under the New Roads and Street Works Act 1991 (as relates to street works) and all signs are subject to the prior approval of TRP Representative
  3. All signs must comply with Chapter 8 of the Traffic Signs and General Directions Regulations
  4. Apart from signs for traffic and pedestrian management safety purposes no signage (including that which purports to advertise the Concession Holder its agents or contractors) will be permitted on any part of the Park or be visible from any part of the Park.

### Protection of Trees within the Park

*The Concession Holder will be bound by and shall comply with the tree guidance annexed hereto (NJUG Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity to Trees – Issue 2) and without prejudice thereto will: -*

* 1. *Not carry out any work on any of the trees within the Compound or Land without the prior written consent of TRP Representative*
  2. *Use all reasonable care to avoid all trees and take account of any representations made by TRP Representative in relation thereto*
  3. *Not cut any tree roots within the Compound or Land exceeding 25mm in diameter without the consent of TRP Representative*
  4. *Not to store or permit to be stored any materials or allow any rubbish or other materials to accumulate or place or cause to be placed anything on the ground within the canopy area of any tree*
  5. *At the expense of the Concession Holder replace or cause to be replaced any tree or trees which die or become diseased or permanently damaged as a result or by reason of the Works permitted by this Contract within a period of five years of the expiry of this Contract however terminated with a semi-mature tree or trees of the same or similar kind*
  6. *Not to carry out any excavations other than by hand digging within any area through which the roots of any of the trees pass*
  7. *Areas of soft landscaping under tree canopies should be fenced off to prevent soil compaction and root damage*
  8. *Diesel must not be stored or dispersed under tree canopies and care must be taken to avoid diesel leakage from plant and machinery onto soil areas*

## Construction (Design & Management) Regulations

* 1. In accordance with Regulation 5 of the CDM Regulations, the Parties hereby agree that

the Concession Holder shall act as the client for the purposes of the CDM Regulations in connection with any Construction Works required in respect of the Works (and for the purposes of this Works Condition "Construction Works" has the same meaning as that provided in Regulation 2 of the CDM Regulations).

* 1. The Concession Holder shall comply with all relevant obligations under CDM Regulations insofar as they relate to the Works, including any Construction Works required in carrying out the Works and any necessary planning required prior to commencing the Construction Works and in this regard, the Concession Holder shall act as the client.
  2. TRP shall provide the Concession Holder with such relevant information that it holds as may (in the reasonable opinion of TRP) be relevant to the Park and which would assist the Concession Holder in any pre-construction planning required of it by the CDM Regulations Provided Always That the Parties agree that TRP shall not be considered a client under the CDM Regulations for the purposes of this Agreement.
  3. Notwithstanding the generality of Works Condition 8.2, in complying with its obligations under the CDM Regulations, the Concession Holder must ensure that where required under the CDM Regulations the Concession Holder appoints in writing:-

1. a designer with control over the pre-construction phase as principal designer; and
2. a contractor as principal contractor

and that the Concession Holder will procure that any principal designer and/or principal contractor will comply with their respective obligations under the CDM Regulations (together referred to in this Condition as the "CDM co-ordinators".

* 1. The Concession Holder must liaise with the CDM co-ordinators to ensure that the obligations under the CDM Regulations are complied with in connection with the Works and the obligations under this Contract.
  2. Where required by the CDM Regulations, the Concession Holder shall make all appropriate notifications to the Health and Safety Executive (or other body fulfilling that function from time to time).
  3. The Concession Holder must ensure that all relevant documents relating to the Construction Works are placed in the health and safety file by the CDM co-ordinators in accordance with the CDM Regulations.
  4. The Concession Holder must maintain for so long as this Contract remains in force the health and safety file for the Construction Works in accordance with the CDM Regulations.
  5. The Concession Holder must in respect of the health and safety file supply at its own cost to the Park Manager before starting the Works:-

1. copies of the health and safety file or any of the documents referenced in it
2. the details (including contact details) of all "designers" to whom the CDM Regulations will apply (and the term "designers" in this context shall have the same meaning as that referred to in the CDM Regulations) and
3. details of any amendment to the health and safety file including the substitution

or appointment of any new designer to whom the CDM Regulations will apply and to allow the Park Manager the right to inspect the health and safety file at any time whilst this Contract remains in force.

* 1. The Concession Holder shall indemnify TRP against any liability arising out of or in connection with any breach of the CDM Regulations or the obligations required to be discharged by this Works Condition 8 unless TRP caused that breach.

## Standard of Works

The Concession Holder covenants with TRP that it will procure that:

* 1. the Works will be carried out by competent personnel with the degree of skill care and diligence reasonably expected of a skilled and qualified person holding himself out as competent to perform works which are of a similar size scope and nature as the Works
  2. the Works will be carried out in a good and workmanlike manner
  3. there will not be used in connection with the Works any product material or drilling practice or technique which is not in conformity with relevant British or European Union standards and/or codes of practice or which at the time of specification selection approval or authorisation was otherwise generally known within the UK construction industry to be deleterious or hazardous to health and safety or to the durability of the Works
  4. If the Concession Holder becomes aware that any such products or materials drilling practices or techniques as referred to in this clause have been authorised for use or are being used the Concession Holder will immediately notify TRP in writing
  5. The Concession Holders’ liability under this Contract will not in any way be reduced or extinguished by reason of any inspection or approval of documents or other enquiry or inspection which TRP may make or procure to be made for its benefit or on its behalf

## Emergencies

TRP may temporarily suspend the Works in the event of an emergency and may order all equipment to be removed and TRP shall not be liable for any costs incurred as a consequence of such suspension.

## Archaeological Finds

* 1. As between TRP and the Concession Holder any Archaeological Finds (meaning for the purposes of this Condition any article of value or antiquity or remains of geological historical or archaeological interest on the Land and Compound) shall be deemed to be the property of the Crown.
  2. The Concession Holder shall inform TRP Representative forthwith upon the discovery of any Archaeological Finds and comply with the reasonable directions of TRP Representative in relation to the removal or disposal of such Archaeological Finds or

shall allow TRP to enter the Land and Compound for the purposes of such removal or disposal: Provided that TRP shall act with all reasonable speed to carry out and complete such removal or disposal.

* 1. The Concession Holder shall not attempt to remove any Archaeological Find without sanction of TRP Representative and shall procure that its employees and sub contractors shall neither remove nor damage such Archaeological Finds.
  2. In the event that the relevant Archaeological Find cannot be moved, or that it is inappropriate that the same be moved then the Concession Holder shall allow TRP or any competent person appointed by TRP to carry out any investigation which they deem is appropriate in connection with its statutory duties or which is otherwise required by law: Provided that TRP shall use all reasonable endeavours to procure that any competent person appointed by TRP shall act with all reasonable speed to carry out and complete such investigation.
  3. The provisions of this Condition shall not affect the rights or obligations of either party under any statutory requirement or other order regulation or bye law.

Schedule 1 Specification of Requirements

1.0 Overview of Requirements

2.0 The Royal Parks Catering Strategy

3.0 The Catering Service

4.0 Minimum Opening Times

5.0 Operating outside of Public Opening Hours

6.0 Ancillary Seasonal Mobiles

7.0 Staff, Friends and Volunteer Discounts

8.0 Deliveries and Storage

9.0 Security

10.0 Litter

11.0 Toilet Cleaning

12.0 Events

13.0 Building Improvement Works

14.0 Marketing and Communications

15.0 Sustainability

1 Overview of Requirements

The Concession Holder shall supply, maintain and operate the catering services in the Facility currently named Serpentine Bar and Kitchen in Hyde Park.

2 The Royal Parks Catering Strategy

The Concession Holder shall deliver catering services which align with The Royal Parks vision for catering in the parks. The vision for catering is defined as:

“Great food for everyone, with friendly and efficient service in contemporary, inviting spaces - all delivered responsibly and ethically”

The Royal Parks’ (TRP) aim is for the cafés, restaurants and kiosks in the Royal Parks to provide food and beverage standards befitting of these world class environments. The catering outlets should offer a quality standard to match the horticultural excellence achieved within the parks themselves. We wish to be the market leaders in open space catering through the development, with our catering partners, of bespoke concepts which are unique to The Royal Parks, appropriate for the specific park environment and relevant to the park visitor in Hyde Park.

The Concession Holder shall embed The Royal Parks’ six key attributes for catering within the Facility. Delivering these consistently shall be an operational priority:

* A high quality food and drink offer:

The Concession Holder shall provide authentic dining experiences using fresh company made (on or off site) products that have been responsibly sourced. Menus shall be familiar to locals and tourists alike and visual merchandising standards shall be high.

* Fast and friendly service:

Service shall be consistently efficient and professional, yet warm and friendly. Staff shall engage with customers rather than just serve them.

* Unique concepts and creative designs:

There shall be a visible connection between the Facility and the unique landscape through the design of interiors, choice of furniture, and printed materials. Designs shall be inclusive and inviting, authentic and aesthetically pleasing but not at the cost of comfort and practicality given the park settings.

* Compelling and well communicated brands:

The Facility shall have a strong, individual identity, which reflects the TRP brand values and stories of the park and runs through everything from the signage and décor to menus, service styles, staff behaviours and customer engagement. Visitors shall be encouraged to connect with the TRP brand through the catering offer. Visitors shall be provided with an experience, rather than simply a catering service.

* Accessible pricing:

The Concession Holder shall reach a broad range of park users throughout the year through an accessible pricing strategy based on the local and tourist demographics. There shall be something for every pocket within the Facility.

* Responsible sourcing and operations:

The Concession Holder shall demonstrate that clear and robust policies around sustainability operate on a daily basis. The Concession Holder shall operate responsible and ethical food sourcing, demonstrate sensitivity to food miles, reduce their overall carbon footprint, minimise wastage and maximise recycling opportunities.

3 The Catering Service

The Concession Holder shall deliver food and beverage standards befitting of The Royal Parks’ world class environments, with the Facility offering a quality standard to match the horticultural excellence achieved within the parks themselves. The Facility shall be relevant to the local setting and the visitor base within Hyde Park. The offer shall complement the food and beverages offered elsewhere within the wider Hyde Park catering portfolio.

## 3.1 Service Style

The Facility shall operate as an informal catering operation meeting the needs of a wide cross section of park visitors including tourists and local workers. The service style for the Facility shall take account of the very high volume of visitors year round in Hyde Park and shall be capable of dealing with these volumes efficiently whilst delivering a consistently great quality product and ensuring a high level of engagement with the customer.

## 3.2 Menu Offer

The menu shall:

* feature simple, well cooked food;
* be prepared on site or at the caterers production kitchen (i.e. limited use of pre-prepared/part-prepared bought in products);
* be stylishly presented using the minimum amount of packaging;
* have appeal throughout the day to capture visitor spend in different day parts commencing with breakfast and running through to late evening in summer;
* provide consistent quality regardless of business volumes;
* feature a product range that is easily recognisable to the high volume of international tourists yet retains a predominately British feel;
* celebrate and support local produce, local suppliers and the wider food heritage of Britain wherever possible and communicate this to the customer;
* provide a strong impulse bakery offer appropriate to different day parts;
* be relatively short but updated regularly (at least quarterly, more frequently if possible) to offer a truly seasonal menu, meet visitor needs at different times of the year and avoid menu fatigue amongst regular customers;
* change through the course of the contract to take account of high street trends and general patterns of diet and food consumption outside of the home;
* meet the diverse cultural, ethnic and dietary needs of The Royal Park’s visitors, noting business opportunities around seasonal visitors with specific dietary requirements;
* feature a broad selection of allergen free dishes;
* use sustainable/fairtrade/ethically traded products where they are available;
* encourage high spend per head and uptake through perception of value for money rather than high prices; and
* surprise and delight visitors exceeding their expectations of park catering.

## 3.3 Design

The quality of the physical space – décor, furniture, service counters, ambiance etc. are considered as important as the quality of the food and service in meeting visitor expectations and in driving new revenue, particularly outside of the peak periods.

The Concession Holder shall create a comfortable relaxed destination which becomes the destination of choice for tourists, local workers and the walking/ cycling commuters who pass through the park. The space shall be designed to have the same level of appeal in the depths of winter as the height of summer through the creation of a compelling space for relaxation, offering great quality food, beverages and service.

## 3.4 Price Point

The Concession Holder shall not use the prime location and ‘captive audience’ to charge excessively above market prices. Higher spend per head shall be driven through high value which in turn makes visitors want to spend more, rather than through high prices. Whilst some premium products would be appropriate given the leisurely nature of the visit, a core range of entry level items shall be made available across all product categories to ensure the facility remains inclusive.

The Concession Holder shall provide a Pricing Strategy setting out the approach to pricing for the duration of the Contract. Prices shall benchmark closely to the high street and other visitor attractions in the locality on a shopping basket of products agreed between the Parties. Three months prior to the anniversary of the Contract the Concession Holder shall carry out a formal benchmarking exercise to compare the Tariffs against four visitor attractions and six high street operations. The benchmark venues shall be agreed with TRP in advance. The benchmarking report shall be presented to TRP in advance of any review of tariffs. In accordance with the Contract, any proposed changes in Tariffs require TRP Approval.

The Tariffs charged for food and beverage items shall be fixed for 12 months in accordance with the Concession Holder’s tender submission. No price increases shall be permitted during the first 12 months of the contract except where responding to an immediate change in Excise Duty or Value Added Tax.

Pricing for the remainder of the Contract Period shall be set in accordance with the Pricing Strategy submitted by the Concession Holder as part of their tender bid.

## 3.5 Brand Alignment

The Concession Holder shall develop a unique identity for the Facility. This identity shall align with and promote TRP brand in a subtle but tangible way, and shall be built around the sense of place and unique heritage of the park. The visitor should be aware that they are in Hyde Park and that this one of eight Royal Parks. The Concession Holder shall ensure that TRP brand values are communicated (for example by showcasing a commitment to sustainability in the design process, food purchased etc.). The Concession Holder shall make the Facility a gateway for visitors to engage with TRP brand, telling stories about the heritage of the parks and driving traffic to the TRP social and digital media channels.

Post contract award and through the life of the Contract the Concession Holder shall work with TRP to ensure that the brand identity remains relevant to the evolving brand of the new charity.

In terms of branding hierarchy, the Facility name shall be the dominant name followed by The Royal Parks name. The Concession Holder’s name should not be evident to the visitor on first observation and shall not be used on signage, product packaging, menus etc. unless otherwise agreed with TRP.

TRP has developed a standard design for takeaway disposable cups across the parks, consistent with TRP brand. The successful tenderer will be required to adopt this design, and any future redesign over the life of the Contract.

## 3.6 Visitor Engagement

The Concession Holder’s staff are often the only direct contact visitors have with people working in the parks, and should behave as ambassadors for TRP. The Concession Holder’s staff shall support the delivery of a welcoming visitor experience in terms of tone of voice and values, not just in the Facility but across the whole park. The Concession Holder’s staff shall be able to answer a range of common visitor queries such as the location of specific features in the park, the timing of ceremonial events, directions to the nearest exit, retail shop, toilets, underground station etc. They should also be able to explain TRP’s role, understand our brand values and be familiar with key messages around the importance of fundraising and how income from the cafe supports investment in the parks. Within the Facility they shall be able to expertly answer questions regarding the menu, ingredient content and allergens.

4 Minimum Opening Times

The Concession Holder shall provide a service to the public 364 days a year with the exception of Christmas Day. The Concession Holder may open on Christmas Day if they wish to by agreement with the Park Manager. The minimum opening hours for the Facility are:

08:00- 16:00 GMT

08:00 – 18:00 BST except in July, August and September when it shall be 20:00

The Concession Holder may operate outside of these hours with Approval. Opening beyond these minimum times will be at the absolute discretion of the Park Manager. The Concession Holder should also consider extending opening hours to coincide with Religious holidays and major park events.

5 Operating Outside of Public Opening Hours

The Concession Holder may, with Approval, open the Facility for private hire outside of the minimum opening hours provided that service to the public is not in any way compromised in the period prior to closure.

6 Ancillary Seasonal Mobiles

The Concession Holder may operate additional mobile services, ancillary to but supporting the main Services with Approval, provided that these are set up within the “Premises” as defined by the Contract. Any services must comply with planning rules, H&S requirements, park regulations and the Premises License.

7 Staff, Friends and Volunteer Discounts

The Concession Holder shall allow the following minimum discounts:

* a minimum of 40% discount off the tariffs in the Facility, excluding sale of alcohol, for members of staff employed by TRP; and
* a 10% discount off the tariffs in the Facility, excluding sale of alcohol, to all card carrying Friends and Volunteers.

Such sales shall count as Non-Commissionable Sales.

The Concession Holder may negotiate discounts for other user groups at their discretion but these sales shall count as Net Sales.

8 Deliveries and Storage

Supplier deliveries shall be made before 10am directly to the Facility. The Concession Holder shall provide a general schedule for such deliveries to the Park Manager. All delivery vehicles whether external delivery vehicles or the Concession Holder’s internal park delivery vehicles shall use the designated routes shown in the Schedule of Site Specific Requirements for the Park, annexed to the Contract, and adhere to the park speed limits and TRP Hyde Park Vehicle Policy. It is the Concession Holder’s responsibility to ensure that the delivery of goods does not adversely affect Hyde Park’s day-to-day activities or the safety of park users.

A member of the Concession Holder’s team shall be on site to oversee and accept deliveries. A key element of this role will be to ensure safety surrounding deliveries and that the drivers leave the park using the correct route. They will also ensure all goods received are forwarded to their storage destination immediately. Under no circumstances shall goods, refuse or pallets be left outside the Facility.

Stocks may be stored only in designated areas in compliance with Health, Safety and Food Hygiene regulations regarding height of storage, temperature controls and avoidance of risks of cross-contamination.

The Concession Holder shall note that for security, temporary or permanent road closures may be introduced during events and other activities within the park at short notice by the police. In such an event the Concession Holder shall work with The Royal Parks, the police and their suppliers to determine how and when deliveries can be received.

The Concession Holder shall ensure that delivery companies are provided with all the correct information ahead of delivering to Hyde Park as listed above. TRP will expect swift action against delivery companies that persistently break the Hyde Park Vehicle Policy, deliver outside of the permitted hours, use incorrect routes or act in an unsafe manner within the park.

9 Security

The Concession Holder shall take all reasonable measures to secure the Premises and Property. Whilst Hyde Park closes between midnight and 5am the park is not secure and vandalism and other anti-social behaviour can occur. The Concession Holder may need to consider adopting enhanced security measures.

The Concession Holder shall take responsibility for the safety and comfort of customers seriously and shall work with The Police to reduce crime. Where requested, the Concession Holder shall display notices/take action as recommended by the police in the area of crime prevention.

10 Litter

The Concession Holder shall minimise the use of packaging to minimise litter, especially litter that could easily blow into the lake. Food waste and packaging shall be cleared from the external tables within 3 minutes of the table being vacated. The Concession Holder shall take all reasonable measures to ensure that litter does not blow into the lake and litter and food waste does not attract rodents and birds. The Concession Holder is responsible for all litter within the Premises and it must be cleared each morning before opening. Where this duty is not sufficiently adhered to, TRP may re-charge for the cost of removing litter from the lake that is directly attributable to the restaurant.

11 Toilet Cleaning

# The Concession Holder shall be responsible for cleaning the outlet toilets to the British Toilet Association (BTA) Guidance: and maintaining the toilets on a planned as well as a reactive basis, including repairs to the fixtures, fittings and drains to the downstream junction with the Ranelagh storm relief sewer (30m East of the outlet).

# The toilets shall remain open during the Facility opening hours.  The toilets shall be thoroughly cleaned prior to opening each day and shall then be checked at intervals of no less than one hour throughout the day following an agreed checklist. Any areas not meeting the agreed standard on being checked shall be rectified immediately.  The checklist shall be signed and displayed within the toilets.  The toilets shall receive a hygienic deep clean at least twice per annum and shall be redecorated once per annum.

# The Concession Holder shall be responsible for the provision of all consumable items, such as toilet paper, soap, paper towels etc. The Concession Holder should where possible source consumables in line with TRP’s Sustainability Strategy. TRP may recharge for any costs associated with sewer blockages that can be directly attributed to the restaurant.

# Regular PPM and inspections shall be undertaken of all fittings within the toilets, especially the toilet seats, cubicle locks, emergency lighting, Accessible toilet pull cord alarms, hand driers, cistern sensors, soap dispensers and other high usage/high wear items.

# The Concession Holder must retain a RADAR key on site at all times available on request to enable customers to request free access to the baby change unit located in the Accessible toilet. This key would also be required to enable staff to free any trapped Accessible toilet user, noting that the new door can be opened outwards to facilitate release, provided the door locking pins are depressed. (Normally the door opens inwards).

12 Events

The Concession Holder acknowledges that small and large scale events take place within Hyde Park on a regular basis and that on occasions members of the public may have restricted access to Facility. All major events within Hyde Park are in line with the Major Events strategy, found here: (<https://www.royalparks.org.uk/__data/assets/pdf_file/0010/41779/Hosting-Major-Events-in-the-Royal-Parks.pdf>)

13 Building Improvement Works

## 13.1 Timetable

The Facility shall be handed over to the incoming Concession Holder on 23rd January 2018. The improvement works shall take place in January/February/March 2018 and the Facility shall be fully refitted and opened by Friday 16th March 2018 (two weeks before Easter 2018).

Where possible work shall be completed without disruption to, or closure of, the Facility, but where closure is unavoidable works shall be carried out at times to be agreed with the Royal Parks Representative, and completed in the shortest possible period. The programme of works shall be included in Submission 3c) and/or as amended with Approval post contract award and included in the Capital Investment Project Schedule.

The Royal Parks shall not be responsible for any costs and/or loss of earnings resulting from closure or late completion of the redevelopment works. If the Works overrun TRP shall claim against the Concession Holder for the loss of income arising from the delayed opening which shall be calculated based on the average sales achieved in the three prior years and applying the appropriate Commission % in the Commission Pricing Schedule.

## 13.2 Detailed Design Development

The Concession Holder shall be responsible for the design and project management of the improvement works to the Facility. The Concession Holder shall work in partnership with Royal Parks’ Representatives immediately after contract award to develop the functional direction and design of the Facility, making any amendments to the schematics proposed in the tender submission as necessary and at their own cost.

The Concession Holder shall prepare 1:100 sketch plans showing schematic layouts of the front and

back of house areas and external landscape as appropriate. The sketch plans shall show basic furniture, servery, kitchen, stores, public toilets and other functional layouts. The Concession Holder shall submit detailed budget cost estimates for the scheme.

On Approval from TRP of the sketch outline scheme, the Concession Holder shall:

* Develop the design and submit this to TRP in the form of preliminary working drawings, colour scheme boards, material boards, rendered elevations, perspectives or whatever media are necessary to describe fully the nature and intent of the designs.
* Present TRP with a detailed budget cost estimate for each area to be developed.
* Ensure that all structural, M&E and other essential services are adequately addressed in the scheme.
* Submit a detailed work programme, including any closure or part closure required to the Premises.
* Present TRP with a copy of the pre-tender Health and Safety Plan.
* Assist TRP through any planning process.

Upon completion of this stage, TRP shall authorise the Concession Holder’s scheme.

The Royal Parks shall lead any application to the planning authorities (including engagement with Historic England) , although the Concession Holder shall be responsible for the cost of the process, including any pre- application engagement and the actual application itself and preparation of required material. Under no circumstances shall the Concession Holder approach the planning authorities without the Approval of TRP.

The Concession Holder shall be required to pay the relevant authorities for any permissions required and shall allow for the cost of this within their Capital Investment Sum.

## 13.3 Budget

The Concession Holder shall be responsible for working within the budget set. TRP will not ‘top up’ any shortfall nor shall TRP renegotiate the commission offer in the event of a misjudgement of the capital requirement or any overspend.

## 13.4 Independent Audit

TRP shall arrange for an independent audit to be carried out on completion of the works to verify the quality and costs of the improvement works.

## 13.5 Repayment of the Capital Investment

The Concession Holder shall depreciate the Concession Holder’s capital investment over the five year contract period using straight-line depreciation as set out in Clause G10 of the Contract. Should the Contract be terminated early by TRP in accordance with clause N.5.2 of the contract TRP shall be responsible for the repayment of the undepreciated sum outstanding to the Concession Holder.

Please note that light equipment (such as cooking utensils, crockery, cutlery, glassware, etc.) computer systems, tills, Epos systems and office equipment shall not be treated as capital expenditure items, but rather as company expenditure items. Should the contract be terminated early these items shall be removed from the Premises by the Concession Holder and shall not therefore be treated as undepreciated capital.

14 Marketing and Communications

The Concession Holder shall be responsible for marketing the Facility in a proactive manner in order to operate at the highest level of capacity throughout the year, thus maximising revenue.

The Concession Holder shall submit an initial Annual Marketing and Communication Plan, aligned with the TRP brand, and tailored to TRP’s visitor/customer segmentation, with a timeline of marketing activities, platforms and channels, and anticipated outcomes.

The Concession Holder shall cooperate with The Royal Parks on social media, sharing content on its own and TRP’s Twitter, Facebook and Instagram accounts. The Concession Holder shall take a proactive approach to review sites such as TripAdvisor, ensuring the outlet profile is up to date, professional photography is included, and reviewers are replied to as appropriate.

TRP will be undertaking promotional/partnership activities with corporate partners within the parks. From time to time, this may include product sampling or partnership awareness material and TRP would seek the cooperation of the Concession Holder if required.

15 Sustainability

All Royal Parks are accredited to ISO 14001 and each year TRP sets its own environmental objectives based on the environmental risk assessment process. Concession Holders shall develop and implement their own site specific environmental management system for the Facility which supports TRP’s environmental objectives, as set out in the TRP Sustainability Strategy, and works towards ISO 14001 accreditation. Concession Holders shall develop their own Environmental Plan, with bi-annual reports submitted to TRP.

The Concession Holder shall:

1. Reduce greenhouse gas emissions, water and energy consumption;
2. Create a circular waste economy, by maximising the prevention of waste and promoting the re-use and recycling of waste and resources;
3. Promote sustainable transport through staff and suppliers (buggies, electric vehicles, bikes, walking etc);
4. Ensure sustainable procurement of goods, services and works;
5. Promote locally and ethically sourced foods; and
6. Improve the health and wellbeing of both staff and visitors through positives initiatives.

Concession Holders shall collaborate in sustainable management good practice with other concession holders operating in the Royal Parks.

The Environmental Plan shall extend to any proposed building and development works, with environmental considerations forming a strong part of the design process, to include equipment selection, utility management and waste management.